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**GUIDANCE LETTER FROM THE ALABAMA ATTORNEY GENERAL, NO.
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SUBJECTS/KEY WORDS: Act No. 2011-535; Beason-Hammon Alabama Taxpayer and Citizen Protection Act; Immigration; Section 30; Business Transaction; Verification of Alien's Immigration Status; Implementation

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This Guidance addresses the implementation of Sections 30(c) and (f) of Act No. 2011-535 in light of the federal government's refusal or delay to verify an alien's immigration status. As mandated by Sections 30(c) and (f), State and local officials can determine an alien's immigration status only through verification with the federal government through either the Systematic Alien Verification for Entitlements ("SAVE") program or some other verification with the U.S. Department of Homeland Security pursuant to 8 U.S.C. § 1373(c). Until a State entity or political subdivision establishes a protocol with the federal government for the SAVE program or for some other verification with the U.S. Department of Homeland Security pursuant to 8 U.S.C. § 1373(c), the State entity or political subdivision cannot implement Sections 30(c) and (f).¹

SECTION 30

Section 30 makes it a Class C felony for an illegal alien to enter into, or attempt to enter into, a business transaction with the State or a political subdivision of the State. Act No. 2011-535, § 30. Section 30 also makes it a Class C felony for a person to enter into, or attempt to enter into, such a business transaction on behalf of an illegal alien. *Id.* A person entering into, or attempting to enter into, a business transaction with the State or a political subdivision of the State is required to demonstrate—to the official or employee conducting the business transaction on behalf of the State or the political subdivision—either (1) his or her United States citizenship or (2) if he or she is an alien, his or her lawful presence in the United States. *Id.*

¹ Sections 30(a), (b), (d), and (e) are implemented.

ANALYSIS

Section 30(c) provides:

Any person entering into a business transaction or attempting to enter into a business transaction with this state or a political subdivision of this state shall be required to demonstrate his or her United States citizenship, or if he or she is an alien, his or her lawful presence in the United States to the person conducting the business transaction on behalf of this state or a political subdivision of this state. United States citizenship shall be demonstrated by presentation of one of the documents listed in Section 29(k). An alien's lawful presence in the United States shall be demonstrated by this state's or a political subdivision of this state's verification of the alien's lawful presence through the Systematic Alien Verification for Entitlements program operated by the [U.S.] Department of Homeland Security, or by other verification with the [U.S.] Department of Homeland Security pursuant to 8 U.S.C. § 1373(c).

Section 30(f) provides:

In the enforcement of this section, an alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c). An official of this state or political subdivision of this state shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States.

Section 30 does not authorize State or local officials to make a determination of an alien's immigration status, and, in fact, expressly forbids it. As emphasized repeatedly throughout Act No. 2011-535, only the federal government may make a determination as to an alien's immigration status. Accordingly, under no circumstances is a State or local official or employee allowed to make a determination as to whether an alien is lawfully present in the United States. An alien may be denied the right to proceed with a business transaction with the State or a political subdivision only on the basis of a federal determination that the alien is unlawfully present.

CONCLUSION

Until a State entity or political subdivision establishes a protocol with the federal government for the SAVE program or for some other verification with the U.S. Department of Homeland Security pursuant to 8 U.S.C. § 1373(c), the State entity or political subdivision cannot implement Sections 30(c) and (f),

and should not require anyone to demonstrate their U.S. citizenship or lawful presence in the United States.