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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

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This Guidance addresses the meaning of the phrase “business transaction” as used in Section 30 of Act No. 2011-535. Principles of statutory construction and case law indicate that, for purposes of Section 30, a “business transaction” is a transaction between a person and the state or a political subdivision of the state that involves the issuance of official government documents or like items of similar formality granting authorization to the person to engage in some activity.

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.*

Section 30 provides that a business transaction includes “any transaction between a person and the state or a political subdivision of the state, including, but not limited to, applying for or renewing a motor vehicle license plate, applying for or renewing a driver’s license or nondriver identification card, or applying for or renewing a business license.” *Id.* Section 30 provides that a business transaction does not include “applying for a marriage license.” *Id.*

ANALYSIS

“The fundamental rule of statutory construction is to ascertain and give effect to the intent of the [L]egislature in enacting the statute.” *Ex parte Ala.*

Dep't of Mental Health & Mental Retardation, 840 So. 2d 863, 867 (Ala. 2002) (internal citations and quotation marks omitted); *Gholston v. State*, 620 So. 2d 719, 721 (Ala. 1993). Legislative intent “may be gleaned from the language used, the reason and necessity for the [A]ct, and the purpose sought to be obtained.” *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 248 (Ala. 1992) (citation omitted); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Advertiser Co. v. Hobbie*, 474 So. 2d 93, 95 (Ala. 1985); *Shelton v. Wright*, 439 So. 2d 55, 57 (Ala. 1983). In ascertaining unclear legislative intent, great weight should be given to the practical effect that a proposed construction will involve. *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951); *Worthen v. State*, 189 Ala. 395, 411, 66 So. 686, 691 (1914). Ambiguous criminal statutes are to be construed in favor of the accused. *Cockrell v. State*, 890 So. 2d 174, 181 (Ala. 2004).

When a statutory term is ambiguous, the *ejusdem generis* principle of statutory construction may be applicable to determine the intent of the Legislature. “Under that principle, where general words follow specific words in a statute, the general words are construed to embrace only objects similar to those objects enumerated by the specific words. This rule is equally applicable when specific words follow general words,” as in Section 30. *Ex parte Cobb*, 703 So. 2d 871, 875 (Ala. 1996); *see also* 2A Singer, Statutes and Statutory Construction, § 47:17 (7th ed. 2007).

The term “business transaction” in Section 30 is sufficiently ambiguous to invoke application of *ejusdem generis*. The definition of “business transaction” includes items that do not involve traditional businesses, including personal drivers’ licenses. And the Legislature saw fit to exclude marriage licenses from the definition. This indicates that marriage licenses, which are not traditional “business transactions,” would have been included within the definition but for the express exclusion. Absent the application of *ejusdem generis*, it could be unclear what the Legislature meant by “business transaction.” *Cf. United States of America v. State of Alabama*, ___ F.Supp.2d ___, ___, 2011 WL 4469941 at *59 (N.D. Ala. 2011) (“[T]he words of Section 30 obfuscate its meaning. It declares a ban on business transactions and then proceeds to define ‘business transactions’ with examples, none of which fit within the commonly understood definition of a business transaction.”).

In Section 30, the specific words “applying for or renewing a motor vehicle license plate, applying for or renewing a driver’s license or nondriver identification card, or applying for or renewing a business license” follow the general words “any transaction between a person and the state or a political subdivision of the state.” Act No. 2011-535, § 30. The *ejusdem generis* principle illustrates that the Legislature was not referring to all transactions involving traditional business, but rather transactions involving the issuance of

official government documents, licenses, or like items of similar formality granting authorization to the person to engage in some activity.

A business license authorizes a business to operate. *E.g.*, Ala. Code § 11-51-90. A motor vehicle license plate authorizes a motor vehicle to be driven. Ala. Code § 32-6-51. A driver's license authorizes a driver to operate a motor vehicle. Ala. Code § 32-6-1. A nondriver identification card is an official government document which some persons use for identification purposes in lieu of a driver's license. While a nondriver identification card does not confer authorization to engage in a particular activity, it is widely recognized as a substitute for a driver's license in enabling a variety of transactions, including voting. *E.g.*, Ala. Code § 17-9-30; Act No. 2011-535 § 29(k); *see also* Ala. Code § 32-6-1.

Applying the *ejusdem generis* principle, "business transaction" embraces only those transactions that are similar to applying for or renewing a motor vehicle license plate, applying for or renewing a driver's license or nondriver identification card, or applying for or renewing a business license—*i.e.*, transactions between a person and the state or a political subdivision of the state that involve the issuance of official government documents or like items of similar formality granting authorization to engage in some activity.

In light of this conclusion, "business transaction" includes professional licenses, such as a nursing license or a license to practice law. It does not embrace the provision of services that governmental entities may provide such as water, sewer, power, sanitation, food, and healthcare.¹ Similarly, while some have suggested that even a definition of "business transaction" that is limited to licensing could include such matters as parking at a meter or using a city swimming pool, these examples are sufficiently far removed from the formality of registering a vehicle, obtaining a driver's license or nondriver identification card, or acquiring a business or professional license to be beyond the scope of Section 30. Further, as a federal court has already reasoned, Section 30 does not extend to registering births and deaths, *see United States of America v. State of Alabama*, ___ F.Supp.2d ___, ___, 2011 WL 4469941 at *60 n.25 (N.D. Ala. 2011), which is distinctly different from obtaining authorization through licensure.

Section 30 also does not extend to judicial functions of the courts. Indeed, various provisions of Act No. 2011-535 take care to include the judiciary, but Section 30 is not among these. Additionally, activities such as filing and defending lawsuits are different in kind from obtaining a license and can enjoy constitutional protections. *See Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. ___, 131 S.Ct. 2488, 2494 (2011) ("[T]he right of access to courts for

¹ Some of these services may be within the scope of other provisions of Act No. 2011-535, such as Section 7 which concerns public benefits.

redress of wrongs is an aspect of the First Amendment right to petition the government.”) (internal citations and quotation marks omitted; alteration by the Court); Ala. Const. Art. I § 10 (“That no person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.”).

This discussion is not comprehensive. It is intended to provide guidance as state and local officials apply Section 30 in the context of a wide variety of situations.

CONCLUSION

As used in Section 30 of Act No. 2011-535, a “business transaction” is a transaction between a person and the state or a political subdivision of the state that involves the issuance of official government documents or like items of similar formality granting authorization to engage in some activity.