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**GUIDANCE LETTER FROM THE ALABAMA ATTORNEY GENERAL, NO.
2011-03**

SUBJECTS/KEY WORDS: Act No. 2011-535; Beason-Hammon Alabama Taxpayer and Citizen Protection Act; immigration; Section 7; “state or local public benefit”; commercial license; professional license

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This Guidance addresses the meaning of the phrase “state or local public benefit” as used in Section 7 of Act No. 2011-535, specifically as it relates to licensing. As explained below, only commercial and professional licenses can fall within the licensing application of Section 7; other licenses, like personal driver’s licenses, are outside the scope of Section 7. (For restrictions that pertain to other licenses, and for additional criminal sanctions applicable to commercial and professional licenses that are wrongfully obtained, see Section 30 of the Act, as discussed in AG Guidance Letters 2011-01 and 2011-02.)

SECTION 7

Section 7 concerns the distribution of state and local public benefits. In so doing, it expressly adopts the definition of “state or local public benefit” used in federal law, 8 U.S.C. § 1621.

With various exceptions, Section 7 provides that “each agency or political subdivision of the state shall verify with the federal government the lawful presence in the United States of each alien who applies for state or local public benefits, pursuant to 8 U.S.C. §§ 1373(c), 1621, and 1625.” Act No. 2011-535 § 7(c). Section 7 requires state and local government officials to defer to federal authorities in determining whether an alien is lawfully present in the United States, by verification through 8 U.S.C. § 1373(c) or the federal Systematic Alien Verification for Entitlements (SAVE) program. “If for any reason the verification of an alien’s lawful presence through the SAVE program is delayed or inconclusive, the alien shall be eligible for state or local public benefits in the interim period if the alien signs a declaration that he or she is an alien lawfully present in the United States.” Act No. 2011-535 § 7(i).

“Any United States citizen applying for state or local public benefits, except those benefits described in subsection (e), shall sign a declaration that he or she is a United States citizen.” Act No. 2011-535 §7(g).

ANALYSIS

As pertinent to licensing, 8 U.S.C. § 1621(c) limits the definition of “state or local public benefit” to “any. . . professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.” Thus, the only licenses that can fall within the definition of “state or local public benefit” under Section 7 are “commercial” and “professional” licenses.

The Alabama Legislature has expressly provided for “commercial” licenses. *See, e.g.*, Ala. Code §§ 32-6-49.1, *et seq.* (Uniform Commercial Driver License Act); Ala. Code §§ 9-11-140, *et seq.* (governing “commercial fishing in public impounded waters and navigable streams”). Moreover, Title 34 of the Alabama Code, entitled “Professions and Businesses,” requires professional licenses for many persons engaged in activities for profit. *See, e.g.*, Ala. Code §§ 34-1-1, *et seq.* (governing licensing of public accountants); Ala. Code §§ 34-2-30, *et seq.* (governing licensing of architects); Ala. Code §§ 34-2A-1, *et seq.* (governing licensing of assisted living administrators).

While only commercial and professional licenses can fall within the scope of Section 7, not all of them do so. Federal law sets out various exceptions which have been incorporated into State law. 8 U.S.C. § 1621(c). Licenses which are neither commercial nor professional, for example personal driver’s licenses, are firmly outside the scope of Section 7.

This conclusion requires some discussion of the interplay between Section 7 and Section 30. Section 7 and Section 30 are not identical in their scope. There are matters which fall *only* within the scope of *Section 7*, matters which fall *only* within the scope of *Section 30* (like personal driver’s licenses), and matters which fall within the scope of *both* Section 7 and Section 30 (like many professional licenses).

Similarly, Section 7 and Section 30 are not identical in the procedures they employ. Section 7 requires that United States citizens sign a declaration and calls for the verification of lawful presence of an alien to be achieved through the mechanisms available under 8 U.S.C. § 1373(c) or the SAVE program, or through a declaration when SAVE is delayed or inconclusive. By contrast, Section 30 calls for United States citizens to provide one of several enumerated documents and calls for verification of the lawful presence of an alien exclusively through SAVE or “by other verification with the [U.S.] Department of Homeland Security pursuant to 8 U.S.C. § 1373(c)”; declarations

are neither required nor authorized by Section 30. Act No. 2011-535 § 30(c). *See also* AG Guidance Letter 2011-01.

Both Section 7 and Section 30, consistent with the remainder of Act No. 2011-535, bar racial profiling and provide that only federal authorities can determine immigration status.

CONCLUSION

Section 7 adopts the definition of “state or local public benefit” used in 8 U.S.C. § 1621(c). As pertinent to licensing, and with some exceptions set out in the federal law, that provision limits the definition to “any . . . professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.” Thus, the only licenses that might fall within the application of Section 7 are commercial and professional licenses. Other licenses are firmly outside the scope of Section 7. (For restrictions that pertain to other licenses, and for additional criminal sanctions applicable to commercial and professional licenses that are wrongfully obtained, see Section 30 of the Act, as discussed in AG Guidance Letters 2011-01 and 2011-02.)