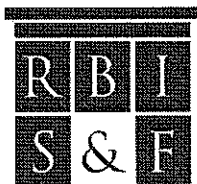


111 Capitol Building
111 East Capitol Street, Suite 101
Jackson, Mississippi 39201



ROBINSON, BIGGS, INGRAM
SOLOP & FARRIS, PLLC
Attorneys at Law

Mailing Address:
Post Office Box 14028
Jackson, Mississippi 39236-4028

Mississippi Legislation Update: Illegal Immigration

By Jeremy P. McNinch
January 22, 2009

In 2008, the Mississippi Legislature enacted the Mississippi Employment Protection Act, which created potentially devastating penalties for hiring illegal aliens in Mississippi.¹ This session, Senate Bill 2896, introduced by Senator Alice Harden of Jackson, would repeal the Act. SB 2896 was referred to committee (Judicial, Division A) on January 19, 2009.

Two other bills, Senate Bill 2144 and House Bill 448, seek to increase the regulation of illegal immigration in Mississippi. Unfortunately, neither bill proposes amendments to the Act that would temper the potentially devastating civil penalties created by that law.

Senate Bill 2144, proposed by Senator Michael Watson of Pascagoula, creates a crime for aiding and abetting "any immigration or immigration-related" offense. Any person convicted of the offense would be guilty of a felony and subject to incarceration for up to five years. The bill also proposes amendments to existing code sections (Miss. Code Ann. §§ 63-1-60 and 45-35-13) adding provisions regarding identification. The department of Public Safety is directed to enter into an agreement with the United States Department of Justice to perform certain immigration officer functions under the United States Immigration and Nationality Act. The bill was referred to committee (Judicial, Division A) on January 6, 2009. SB 2144 does not propose amendments to the Act.

¹ Codified as Mississippi Code Annotated Sections 71-11-1 and 71-11-3, the Act mandates that all employers in Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. The employment eligibility of all new employees must be verified using E-Verify, an electronic database system administered by the United States Customs and Immigration and Immigration Services, a bureau of the Department of Homeland Security. An employer that violates provisions of the Act is subject to cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three years. The violator may *also* be subject to the loss of any license, permit, certificate, or other document granted by any agency, department, or entity of the State of Mississippi for the right to do business for up to one year.

House Bill 448, offered by Representative Deryk R. Parker of Lucedale, proposes the creation of a felony offense for the knowing or intentional hiring of an illegal alien. The offense would be punishable by imprisonment for up to five years. The legislation also proposes amendments to other immigration-related laws, making clear that those provisions do not preclude conviction under the criminal provision proposed in HB 448. For example, under Section 71-1-371, which was enacted in 2005, any business convicted of knowingly employing an illegal alien is ineligible to receive any loan, grant or other form of assistance made available under certain government programs, such as the Mississippi Existing Industry Productivity Loan Program.

While HB 448 includes a proposed amendment to the Act, the proposal corrects none of the inconsistencies, ambiguous language, and overly-harsh penalties identified last legislative session. In fact, the proposed amendment expands potential liability for violations. The bill provides that a violator can be held civilly liable under the Mississippi Employment Protection Act **AND** criminally liable under the provisions of HB 448. The bill was referred to committee (Judicial, Division B) on January 12, 2009.

A bill proposed by Senator Watson during the First Extraordinary Session in 2008, Senate Bill 2005, would have corrected many of the problems with the Mississippi Act. Although it passed the Senate, SB 2005 was not brought up for consideration in the House. Many observers hope the Legislature will propose a similar bill again this session.