



require anyone to demonstrate their U.S. citizenship or lawful presence in the United States.

PLEASE NOTE: With respect to the registration and issuance of decals on manufactured homes, the temporary restraining order issued in Central Alabama Fair Housing Center, et al. v. Magee, et al., United States District Court, Middle District of Alabama, No. 2:11cv982-MHT, is still in effect. You must comply with that order until further notice. Nothing herein should be considered as modifying, amending, or changing in any way the communications you have received regarding the need to comply with that order.

2. On December 2, 2011, Commissioner Magee entered the order attached as Exhibit B, extending the deadline related to manufactured home registration decals under Ala. Code § 40-12-255 to December 30, 2011.

3. On December 1, 2011, the Attorney General issued Guidance Letter No. 2011-01, attached as Exhibit C. Pursuant to this guidance, state or local officials should not require anyone to demonstrate their U.S. citizenship or lawful presence in the United States for purposes of Section 30 of Act No. 2011-535, until the State entities or political subdivisions in question have established 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).

4. On December 2, 2011, the Attorney General issued Guidance Letter No. 2011-02, attached as Exhibit D. Pursuant to this guidance, the transactions at issue in this lawsuit—obtaining manufactured home registration decals under Ala.

Code § 40-12-255—are “business transactions” for purposes of Section 30 of Act No. 2011-535.

Respectfully submitted,

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*Attorneys for the State Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5th day of December 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel for Plaintiffs who are registered for electronic service in this case.

I FURTHER CERTIFY that on the 5th day of December 2011, I am serving by electronic mail the following co-defendant for whom no counsel has yet appeared:

Judge Jimmy Stubbs      [probatejudge@elmoreco.org](mailto:probatejudge@elmoreco.org)

I FURTHER CERTIFY that on the 5th day of December 2011, I am serving by electronic email the following counsel for Plaintiffs who are not yet registered for service using the CM/ECF system:

Diana S. Sen                      [dsen@latinojustice.org](mailto:dsen@latinojustice.org)  
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s/ James W. Davis  
Of Counsel

# Exhibit A

to State Defendant's Supplemental Evidence in  
Opposition to Plaintiffs' Motion for Preliminary  
Injunction (Doc. 13)

Commissioner Magee's December 1, 2011  
Memo



**JULIE P. MAGEE**  
Commissioner

# State of Alabama Department of Revenue

(www.revenue.alabama.gov)  
50 North Ripley Street  
Montgomery, Alabama 36132

**CYNTHIA UNDERWOOD**  
Assistant Commissioner

**MICHAEL E. MASON**  
Deputy Commissioner

## MEMORANDUM

December 1, 2011

**TO:** COUNTY PROBATE JUDGES, COUNTY REVENUE COMMISSIONERS, COUNTY TAX ASSESSORS, COUNTY TAX COLLECTORS, COUNTY LICENSE COMMISSIONERS, COUNTY LICENSING OFFICIALS, COUNTY LICENSING INSPECTORS, COUNTY DIRECTORS OF REVENUE

**FROM:** JULIE P. MAGEE, COMMISSIONER, ALABAMA DEPARTMENT OF REVENUE

**RE:** UPDATED INSTRUCTIONS CONCERNING SECTION 30 OF ACT NO. 2011-535

Regarding Section 30 of Act No. 2011-535, as stated in my November 28, 2011, Memo:

Under no circumstances is a State or county official or employee to make a determination as to whether an alien is lawfully present in the United States. For this reason, you can no longer allow an alien to document his lawful presence in the United States through the use of documents or legible photocopies of documents. The Department of Revenue's previously issued list of "Lawfully Present Alien Documents" is no longer valid.

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. If you are unable to verify that an alien is unlawfully present in the United States through a determination by the SAVE Program or by other verification with the United States Department of Homeland Security, then you should allow the alien to conduct the requested business transaction with your office.

In addition, after further consultations with the Attorney General's office, please note the following: until you have been granted access to the federal government's SAVE program or can verify an alien's immigration status through some other verification method with the U.S. Department of Homeland Security pursuant to 8 U.S.C. § 1373(c), you should not implement Section 30, and you should not require anyone to demonstrate their U.S. citizenship or lawful presence in the United States.

**PLEASE NOTE:** With respect to the registration and issuance of decals on manufactured homes, the temporary restraining order issued in *Central Alabama Fair Housing Center, et al. v. Magee, et al.*, United States District Court, Middle District of Alabama, No. 2:11cv982-MHT, is still in effect. You must comply with that order until further notice. Nothing herein should be considered as modifying, amending, or changing in any way the communications you have received regarding the need to comply with that order.

# Exhibit B

to State Defendant's Supplemental Evidence in  
Opposition to Plaintiffs' Motion for Preliminary  
Injunction (Doc. 13)

Commissioner Magee's December 2, 2011  
Order



**JULIE P. MAGEE**  
Commissioner

# State of Alabama Department of Revenue

(www.revenue.alabama.gov)  
50 North Ripley Street  
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**CYNTHIA UNDERWOOD**  
Assistant Commissioner

**MICHAEL E. MASON**  
Deputy Commissioner

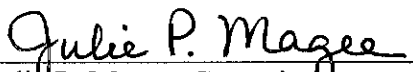
## ORDER OF THE COMMISSIONER OF REVENUE

Due to the difficulties individuals may have faced in efforts to obtain or renew their manufactured home registrations pursuant to §40-12-255, *Code of Alabama 1975*, and pay related manufactured home registration fees due by November 30, 2011, under the power granted to me by §40-2-11, *Code of Alabama 1975*, I hereby issue the following order:

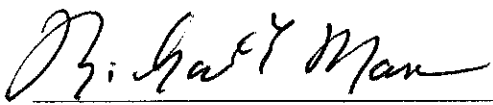
**EXTENSION OF TIME FOR OBTAINING OR RENEWING MANUFACTURED HOME REGISTRATIONS.** For the purpose of applying the Manufactured Home Registration law as related to the annual issuance of the manufactured home registration decals and payment of related registration fees due by November 30, 2011, the deadline has been extended through the last business day of 2011 (December 30, 2011), without any penalty for late registration for those who register on or before December 30, 2011.

Entered this 2<sup>nd</sup> day of December 2011.

SIGNED

  
Julie P. Magee, Commissioner  
Alabama Department of Revenue

ATTEST

  
Michael E. Mason, Deputy Commissioner  
Alabama Department of Revenue



# Exhibit C

to State Defendant's Supplemental Evidence in  
Opposition to Plaintiffs' Motion for Preliminary  
Injunction (Doc. 13)

Attorney General Guidance Letter No. 2011-01



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
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December 1, 2011

**GUIDANCE LETTER FROM THE ALABAMA ATTORNEY GENERAL, NO.  
2011-01**

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).<sup>1</sup>

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.*

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<sup>1</sup> Sections 30(a), (b), (d), and (e) are implemented.

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### 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),

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

# Exhibit D

to State Defendant's Supplemental Evidence in  
Opposition to Plaintiffs' Motion for Preliminary  
Injunction (Doc. 13)

Attorney General Guidance Letter No. 2011-02



STATE OF ALABAMA  
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December 2, 2011

**GUIDANCE LETTER FROM THE ALABAMA ATTORNEY GENERAL, NO.  
2011-02**

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.*

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*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

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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.<sup>1</sup> 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

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<sup>1</sup> 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.



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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.