

By: Representative Malone

To: Labor; Ways and Means

HOUSE BILL NO. 628

1 AN ACT TO CREATE THE OFFICE OF IMMIGRATION WITHIN THE
 2 MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY; TO PROVIDE DEFINITIONS
 3 FOR THE ACT; TO PROVIDE POWERS AND DUTIES OF SUCH OFFICE; TO
 4 REQUIRE ANY EMPLOYER THAT HIRES ILLEGAL IMMIGRANTS TO REGISTER
 5 WITH THE OFFICE OF IMMIGRATION; TO PROVIDE THAT SUCH EMPLOYER
 6 SHALL PAY A FEE TO RECEIVE A REGISTRATION CARD FOR A CERTAIN
 7 PERIOD OF TIME; TO PROVIDE RENEWAL FEES FOR SUCH REGISTRATION
 8 CARDS; TO REQUIRE ILLEGAL IMMIGRANTS WHO ARE HIRED IN THIS STATE
 9 TO OBTAIN AN EMPLOYMENT-IDENTIFICATION CARD FROM THE OFFICE OF
 10 IMMIGRATION; TO PROVIDE THAT A FEE SHALL BE CHARGED FOR RENEWAL
 11 AND LOST EMPLOYMENT-IDENTIFICATION CARDS; TO PROVIDE PENALTIES FOR
 12 FRAUDULENT AND OTHER USES OF THE EMPLOYMENT-IDENTIFICATION CARD;
 13 TO REQUIRE ANY EMPLOYER THAT HIRES ILLEGAL IMMIGRANTS TO DEDUCT
 14 AND WITHHOLD A CERTAIN PERCENT OF WAGES PAID TO AN ILLEGAL
 15 IMMIGRANT AND REMIT SUCH AMOUNT TO THE STATE TAX COMMISSION; TO
 16 AUTHORIZE THE STATE TAX COMMISSION TO PROMULGATE RULES AND
 17 REGULATIONS TO ADMINISTER CERTAIN PROVISIONS OF THIS ACT; TO AMEND
 18 SECTION 45-1-2, MISSISSIPPI CODE OF 1972, TO ADD THE OFFICE OF
 19 IMMIGRATION TO THE LIST OF EXISTING DEPARTMENTS WITHIN THE
 20 DEPARTMENT OF PUBLIC SAFETY; AND FOR RELATED PURPOSES.

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

22 **SECTION 1.** **Purpose.** The purpose of this act is create the
 23 Office of Immigration within the Department of Public Safety to
 24 regulate illegal immigrants who are employed in the State of
 25 Mississippi and to levy a tax upon all wages earned in this state
 26 by such illegal immigrants. Nothing in this act provides any
 27 immunity from criminal prosecution, civil liability or deportation
 28 of illegal immigrants found in this state.

29 **SECTION 2.** For the purposes of Sections 1 through 12 of this
 30 act the following words have the meanings ascribed in this section
 31 unless the context clearly requires otherwise:

32 (a) "Department" means the Department of Public Safety.

33 (b) "Commissioner" means the Commissioner of Public
 34 Safety.

35 (c) "Employer" means any company, corporation,
 36 partnership, business, enterprise or other legal entity doing

37 business in the State of Mississippi that employs one or more
38 illegal immigrants.

39 (d) "Employment-Identification card" means a card issued by
40 the Office of Immigration to an illegal immigrant hired by an
41 employer.

42 (e) "Illegal immigrant" means any person who does not meet
43 one of the following descriptions:

44 (i) Is a citizen or national of the United States;

45 (ii) Is an alien lawfully admitted for permanent or
46 temporary residence in the United States;

47 (iii) Has conditional permanent resident status in the
48 United States;

49 (iv) Has an approved application for asylum in the
50 United States or has entered into the United States in refugee
51 status;

52 (v) Has a valid, unexpired nonimmigrant visa or
53 nonimmigrant visa status for entry into the United States;

54 (vi) Has a pending application for asylum in the United
55 States;

56 (vii) Has a pending or approved application for
57 temporary protected status in the United States;

58 (viii) Has approved deferred action status; or

59 (ix) Has a pending application for adjustment of status
60 to that of an alien lawfully admitted for permanent residence in
61 the United States or conditional permanent resident status in the
62 United States.

63 (f) "Office" means Office of Immigration within the
64 Mississippi Department of Public Safety.

65 (g) "Registration card" means the card issued by the Office
66 of Immigration to any employer.

67 **SECTION 3.** (1) Every employer who hires an illegal
68 immigrant shall register with the Office of Immigration. Every
69 employer that registers under the provisions of this section shall

70 be issued a registration card by the Office of Immigration
71 identifying such employer as one that hires illegal immigrants.
72 The card shall be issued for a twelve-month period and shall
73 expire at midnight on the last day of the twelfth month.

74 (2) A fee of One Thousand Dollars (\$1,000.00) shall be
75 collected for the issuance of an original or renewal registration
76 card.

77 **SECTION 4.** (1) There is created the Office of Immigration
78 within the Department of Public Safety to regulate activities of
79 illegal immigrants.

80 (2) The Commissioner of the Department of Public Safety
81 shall appoint an Executive Director for the Office of Immigration.

82 (3) The Office of Immigration shall exercise the following
83 powers and duties in carrying out the purposes of this act:

84 (a) Require every employer to provide any documents
85 provided by illegal immigrants to such employer;

86 (b) Communicate with the State Tax Commission and
87 provide any information needed by the Tax commission regarding any
88 employer registered with the office.

89 (c) Promulgate and adopt rules and regulations and
90 policies in accordance with the Mississippi Administrative
91 Procedures Law to implement, administer and enforce the provisions
92 of Sections 1 through 12 of this act.

93 **SECTION 5.** (1) An illegal immigrant who works in the State
94 of Mississippi shall obtain an employment-identification card.
95 The card shall be issued to such immigrant by the Office of
96 Immigration that is certified by the immigrant and attested by the
97 Executive Director of the Office of Immigration as to the true
98 name, correct age and such other identifying data as required by
99 the office.

100 (2) Data for the issuance of an employment-identification
101 card shall include a birth certificate or other document to
102 establish the age and identity of the applicant and such other

103 identifying data as is required on an application prescribed by
104 the Office of Immigration.

105 (3) The office shall assign an "identifying code" to each
106 illegal immigrant who obtains an employment-identification card
107 and place such code on the face of each card. The "identifying
108 code" shall not change for the illegal immigrant once assigned by
109 the office.

110 **SECTION 6.** (1) Each applicant for an original
111 employment-identification card issued pursuant to Sections 1
112 through 12 of this act shall be issued a card for a six-month
113 period. Each card shall expire at midnight on the last day of the
114 sixth month.

115 (2) All renewal identification cards shall be for six-month
116 periods and may be renewed any time during the sixth month upon
117 application and payment of the required fee.

118 (3) A fee of One Hundred Dollars (\$100.00) shall be
119 collected for the issuance of an original or renewal
120 employment-identification card plus the applicable photograph fee
121 as provided in subsection (4) of this section. The
122 employment-identification card fee of One Hundred Dollars
123 (\$100.00) shall be deposited into the State General Fund. The
124 photograph fee shall be deposited into a special photograph fee
125 account or the State General Fund as provided under subsection (4)
126 of this section.

127 (4) The commissioner, by rule or regulation, shall establish
128 an employment-identification card photograph fee which shall be
129 the actual cost of the photograph rounded off to the next highest
130 dollar. Monies collected for the photograph fee shall be
131 deposited into a special photograph fee account which the Office
132 of Immigration shall use to pay the actual cost of producing the
133 photographs. Any monies collected in excess of the actual costs
134 of the photography shall be deposited to the General Fund of the
135 State of Mississippi.

136 (5) The office shall maintain a record of all
137 employment-identification cards issued, except for those cards
138 cancelled, surrendered or denied renewal.

139 **SECTION 7.** (1) If an employment-identification card issued
140 under this act is lost, destroyed or mutilated, or a new name is
141 required, the person to whom it was issued may obtain a duplicate
142 by furnishing satisfactory proof of such fact to the department.
143 The same identifying data shall be furnished for a duplicate as
144 for an original card. A fee of Thirty-five Dollars (\$35.00) plus
145 the applicable photograph fee shall be collected for the first
146 duplicate card issued and a fee of Fifty Dollars (\$50.00) plus the
147 applicable photograph fee shall be collected for the second and
148 each subsequent duplicate copy. However, whenever a duplicate
149 copy of an employment-identification card is issued only because a
150 new name is required and the previously issued identification card
151 is returned to the department, the fee for the issuance of such
152 duplicate shall be Fifteen Dollars (\$15.00) plus the applicable
153 photograph fee, regardless of whether the duplicate is the first,
154 second or subsequent duplicate copy. All fees collected under
155 this section, except photograph fees, shall be deposited into the
156 State General Fund. Photograph fees collected under this section
157 shall be deposited into a special photograph fee account or into
158 the State General Fund in the same manner as photograph fees
159 collected from the issuance of drivers' licenses under Section
160 63-1-43.

161 (2) Any person who loses an employment-identification card
162 and who, after obtaining a duplicate, finds the original card
163 shall promptly surrender the original card to the department.

164 (3) All employment-identification cards shall be centrally
165 issued by the Office of Immigration, adequately describe the
166 registrant, bear a color photograph of the registrant, and include
167 other such identifying data as required by the office.

168 **SECTION 8.** (1) No person shall:

169 (a) Display, or cause or permit to be displayed, or
170 have in his possession, any cancelled, fictitious, fraudulently
171 altered or fraudulently obtained employment-identification cards;

172 (b) Lend an employment-identification card to any
173 person or knowingly permit the use thereof by another;

174 (c) Display or represent any employment-identification
175 card not issued to him as being his card;

176 (d) Permit any unlawful use of an
177 employment-identification card issued to him;

178 (e) Do any act forbidden or fail to perform any act
179 required by this act;

180 (f) Photograph, photostat, duplicate or in any way
181 reproduce, manufacture, sell or distribute any
182 employment-identification card or facsimile thereof so that it
183 could be mistaken for a valid employment-identification card; or

184 (g) Display or have in his possession any photograph,
185 photostat, duplicate, reproduction or facsimile of an
186 employment-identification card unless authorized by the provisions
187 of Sections 1 through 12 of this act.

188 (2) Any person convicted of a violation of any provision of
189 paragraphs (a), (b), (c), (d), (e) or (g) of subsection (1) of
190 this section is guilty of a misdemeanor and shall be punished by a
191 fine of not more than Five Hundred Dollars (\$500.00) or by
192 imprisonment for not more than thirty (30) days, or by both such
193 fine and imprisonment.

194 (3) Any person under twenty-one (21) years of age at the
195 time of the offense who is convicted of a violation of paragraph
196 (f) of subsection (1) of this section shall be punished as
197 follows:

198 (a) A first offense shall be a misdemeanor punishable
199 by a fine of not more than Five Hundred Dollars (\$500.00), or by
200 imprisonment for not more than six (6) months, or by both such
201 fine and imprisonment.

202 (b) A second or subsequent offense, the offenses being
203 committed within a period of five (5) years, shall be a
204 misdemeanor punishable by a fine of not more than Five Thousand
205 Dollars (\$5,000.00), or by imprisonment for not more than one (1)
206 year, or by both such fine and imprisonment.

207 (4) Any person twenty-one (21) years of age or older at the
208 time of the offense who is convicted of a violation of paragraph
209 (f) of subsection (1) of this section is guilty of a felony and
210 shall be punished by a fine of not less than Five Thousand Dollars
211 (\$5,000.00), or imprisonment for not more than three (3) years, or
212 by both such fine and imprisonment.

213 **SECTION 9.** No public entity or public official shall be
214 liable for any loss or injury resulting directly or indirectly
215 from false or inaccurate information contained in an
216 employment-identification card issued pursuant to Sections 1
217 through 12 of this act.

218 **SECTION 10.** (1) Every employer making payments of wages to
219 illegal immigrant employees under the provisions of Sections 1
220 through 12 of this act shall deduct and withhold from such wages
221 an amount equal to five percent (5%) of the total wages paid to
222 such illegal immigrant employee. Employers that lease illegal
223 immigrant employees by a contract of employment with a leasing
224 employer may be considered the employer for withholding purposes.
225 In such cases, payments to the leasing company may be attached for
226 such withholding upon default by the leasing firm.

227 Employers that lease illegal immigrant employees to other
228 employers are required to maintain separate ledgers of account for
229 these employees. These lease employers shall furnish the Tax
230 Commission annually a summary of wages paid, number of such
231 employees and amounts withheld by location. In addition, the Tax
232 Commissioner shall require employers that lease illegal immigrant
233 employees to businesses to give a cash bond or an approved surety
234 bond in an amount sufficient to cover twice the estimated tax

235 liability for a period of three (3) months. This bond shall be
236 filed with the Tax Commissioner prior to beginning business in
237 this state. Failure to comply with this provision shall subject
238 such employer to the penalties provided under law for failure to
239 provide information to the Tax Commission.

240 (2) (a) Except as otherwise provided in this subsection,
241 every employer required to deduct and withhold from wages under
242 Sections 1 through 12 of this act shall, for each calendar
243 quarter, on or before the fifteenth day of the month following the
244 close of such calendar quarter, file a withholding return as
245 prescribed by the Tax Commissioner and pay over to the Tax
246 Commissioner the full amount required to be deducted and withheld
247 from wages by such employer for the calendar quarter. Provided
248 that the Tax Commissioner may, by regulation, provide that every
249 such employer shall, on or before the fifteenth day of each month,
250 pay over to the Tax Commissioner or a depository designated by the
251 Tax Commissioner, the amount required to be deducted and withheld
252 by such employer for the preceding month, if such amount is One
253 Hundred Dollars (\$100.00) or more. Returns and payments placed in
254 the mail must be postmarked by the due date in order to be timely
255 filed, except when the due date falls on a weekend or holiday,
256 returns and payments placed in the mail must be postmarked by the
257 first working day following the due date in order to be considered
258 timely filed.

259 (b) The Tax Commissioner may promulgate rules and
260 regulations to require or permit filing periods of any duration,
261 in lieu of monthly or quarterly filing periods, for any taxpayer
262 or group thereof under the provisions of Sections 1 through 12 of
263 this act.

264 (3) Notwithstanding any of the other provisions of this
265 section, all transient employers and all employers engaged in any
266 business that is seasonal shall make a return and pay over to the
267 Tax Commissioner on a monthly basis, the full amounts required to

268 be deducted and withheld from the wages by such employer for the
269 calendar month. Such returns and payments to the Tax Commissioner
270 by such employers shall be made on or before the fifteenth day of
271 the month following the month for which such amounts were deducted
272 and withheld from the wages of his employees. The Tax
273 Commissioner shall have the authority to issue reasonable rules
274 and regulations designating or classifying said transient and
275 seasonal employers.

276 (4) If the Tax Commissioner, in any case, has justifiable
277 reason to believe that the collection of funds required to be
278 withheld by any employer as provided in this section is in
279 jeopardy, he may require the employer to file a return and pay
280 such amount required to be withheld at any time.

281 (5) Every employer who fails to withhold or pay to the Tax
282 Commissioner any sums required by this section to be withheld and
283 paid, shall be personally and individually liable therefor; and
284 any sum or sums withheld in accordance with the provisions of this
285 section shall be deemed to be held in trust for the State of
286 Mississippi and shall be recorded by the employer in a ledger
287 account so as to clearly indicate the amount of tax withheld and
288 that the amount is the property of the State of Mississippi.

289 (6) Once an employer has become liable to file a quarterly
290 return of withholding, he must continue to file a quarterly
291 report, even though no amount has been withheld, until such time
292 as he notifies the Tax Commissioner, in writing, that he no longer
293 has illegal immigrant employees or that he is no longer liable for
294 such quarterly returns.

295 (7) Once an employer has become liable to file a monthly
296 return of withholding, he must continue to file a monthly report,
297 even though no amount has been withheld until such time as he
298 notifies the Tax Commissioner, in writing, that he no longer has
299 employees or that he is no longer liable for such monthly returns.

300 **SECTION 11.** Nothing in Sections 1 through 12 of this act
301 shall be construed to supersede any federal law that prohibits
302 illegal immigrants from working in the United States or provides
303 penalties for violation of such laws.

304 **SECTION 12.** The Tax Commissioner may promulgate and adopt
305 rules and regulations and policies in accordance with the
306 Mississippi Administrative Procedures Law to implement, administer
307 and enforce the provisions of Sections 1 through 12 of this act.

308 **SECTION 13.** Section 45-1-2, Mississippi Code of 1972, is
309 amended as follows:

310 45-1-2. (1) The Executive Director of the Department of
311 Public Safety shall be the Commissioner of Public Safety.

312 (2) The Commissioner of Public Safety shall establish the
313 organizational structure of the Department of Public Safety, which
314 shall include the creation of any units necessary to implement the
315 duties assigned to the department and consistent with specific
316 requirements of law including, but not limited to:

- 317 (a) Office of Public Safety Planning;
- 318 (b) Office of Medical Examiner;
- 319 (c) Office of Mississippi Highway Safety Patrol;
- 320 (d) Office of Crime Laboratories;
- 321 (e) Office of Law Enforcement Officers' Training

322 Academy;

323 (f) Office of Support Services;

324 (g) Office of Narcotics, which shall be known as the
325 Bureau of Narcotics; * * *

326 (h) Office of Homeland Security; and

327 (i) Office of Immigration.

328 (3) The department shall be headed by a commissioner, who
329 shall be appointed by and serve at the pleasure of the Governor.
330 The appointment of the commissioner shall be made with the advice
331 and consent of the Senate. The commissioner may assign to the

332 appropriate offices such powers and duties as deemed appropriate
333 to carry out the department's lawful functions.

334 (4) The commissioner of the department shall appoint heads
335 of offices, who shall serve at the pleasure of the commissioner.
336 The commissioner shall have the authority to organize the offices
337 established by subsection (2) of this section as deemed
338 appropriate to carry out the responsibilities of the department.
339 The organization charts of the department shall be presented
340 annually with the budget request of the Governor for review by the
341 Legislature.

342 (5) The commissioner of the department shall appoint, from
343 within the Department of Public Safety, a statewide safety
344 training officer who shall serve at the pleasure of the
345 commissioner and whose duty it shall be to perform public training
346 for both law enforcement and private persons throughout the state
347 concerning proper emergency response to the mentally ill,
348 terroristic threats or acts, domestic conflict, other conflict
349 resolution, and such other matters as the commissioner may direct.

350 **SECTION 14.** This act shall take effect and be in force from
351 and after July 1, 2007.