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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2011	.	
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The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Statutory Revision shall designate ss. 448.30 and 448.31, Florida Statutes, as created by this act, as part III of chapter 448, Florida Statutes, titled "UNAUTHORIZED IMMIGRANTS."

Section 2. Section 448.30, Florida Statutes, is created to read:

448.30 Definitions.—As used in this part, the term:

(1) "Agency" means a department, board, bureau, district, commission, authority, or other similar body of this state or a



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14 county, municipality, special district, or other political
15 subdivision of this state which issues a license for purposes of
16 operating a business in this state or in any jurisdiction within
17 this state.

18 (2) "Employee" means any person, other than an independent
19 contractor, who, for consideration, provides labor or services
20 to an employer in this state.

21 (3) "Employer" means a person or agency that employs one or
22 more employees in this state. In the case of an independent
23 contractor, the term means the independent contractor and does
24 not mean the person or agency that uses the contract labor.

25 (4) "E-Verify Program" means the program for electronic
26 verification of employment eligibility which is operated by the
27 United States Department of Homeland Security, or any successor
28 program.

29 (5) "Independent contractor" means a person that carries on
30 an independent business, contracts to do a piece of work
31 according to its own means and methods, and is subject to
32 control only as to results.

33 (6) "License" means any license, permit, certificate,
34 approval, registration, charter, or similar form of
35 authorization that is required by law and issued by any agency
36 for the purpose of operating a business in this state. The term
37 includes, but is not limited to, articles of incorporation, a
38 certificate of partnership, a partnership registration, articles
39 of organization, and a transaction privilege tax license.

40 Section 3. Section 448.31, Florida Statutes, is created to
41 read:

42 448.31 Verification of employment eligibility.-



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43 (1) An employer who hires a new employee on or after July
44 1, 2012, shall:

45 (a) Register with the E-Verify Program; use the program for
46 all new hires, both United States citizens and noncitizens; and
47 not use the program selectively.

48 (b) Upon acceptance on or after that date of an offer of
49 employment by the new employee, verify the employment
50 eligibility of the employee through, and in accordance with the
51 time periods and other requirements of, the E-Verify Program;
52 and

53 (c) Maintain a record of the verification for 3 years after
54 the date of hire or 1 year after the date employment ends,
55 whichever is longer.

56 (2) (a) An employer who hires a new employee on or after
57 July 1, 2012, is exempt from the requirements of subsection (1)
58 if the employer:

59 1. Requests and receives from the employee a valid driver's
60 license or identification card that is issued by a state or
61 outlying possession of the United States and that complies with
62 the federal REAL ID Act of 2005 and the final rule promulgated
63 by the United States Department of Homeland Security
64 implementing that act;

65 2. Within 3 business days of the first day of work, swipes
66 the common machine-readable zone on the driver's license or card
67 using the highest standard of authentication equipment and
68 software to:

69 a. To determine that the document is not fraudulent; and

70 b. Verify the physical description and other personal
71 identifying information of the employee who presents the



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72 document against the data contained on the machine-readable
73 zone;

74 3. Maintains, for 3 years after the date of hire or 1 year
75 after the date employment ends, whichever is longer, a printed
76 record of the results of the authentication conducted under this
77 subsection and a photocopy of the document the employee
78 presented. The employer shall retain the record and the
79 photocopy with the federal Form I-9; and

80 4. Complies with the requirements of this subsection for
81 every new employee, both United States citizens and noncitizens,
82 unless and until the employer registers with the E-Verify
83 Program, and does not implement the requirements of this
84 subsection selectively.

85 (b) The Department of Highway Safety and Motor Vehicles
86 shall:

87 1. Maintain on the website for the department a list of all
88 states and outlying possessions of the United States that comply
89 with the federal REAL ID Act of 2005 and the final rule
90 promulgated by the United States Department of Homeland Security
91 implementing that act. For each state or possession, the
92 department shall specify the type of document that is in
93 compliance and the date on which the state or possession began
94 issuing the document that is in compliance.

95 2. Adopt rules pursuant to ss. 120.536(1) and 120.54
96 prescribing standards and requirements for the equipment and
97 software used under paragraph (a).

98 (c) The procedures of this subsection are authorized for
99 the purpose of authenticating a driver's license or
100 identification card presented by a new employee, combating



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101 fraud, and matching identifying information for the employee
102 against the document. An employer may not use the procedures to
103 discriminate on the basis of national origin or citizenship
104 status, except against a person who is not authorized to work in
105 the United States. Unless otherwise authorized by law, an
106 employer may not use information obtained through these
107 procedures for any purpose unrelated to verifying the identity
108 and employment authorization of a new employee.

109 (3) An employer who fails to comply with this section is
110 subject to the suspension of any license held by the employer
111 through the period of noncompliance. The suspension of a license
112 pursuant to this subsection by:

113 (a) An agency subject to chapter 120 must comply with the
114 provisions of s. 120.60(5).

115 (b) An agency not subject to chapter 120 must comply with
116 procedures substantially similar to the provisions of s.
117 120.60(5).

118 (4) An employer is not liable for wrongful termination if
119 the employer terminates an employee:

120 (a) In accordance with federal regulations upon a final
121 determination of ineligibility for employment through the E-
122 Verify Program; or

123 (b) After complying with subsection (2) and reasonably
124 concluding that the employee presented a fraudulent document or
125 that the physical description or other personal identifying
126 information of the employee who presents the document does not
127 match the data contained on the machine-readable zone.

128 Section 4. Law enforcement and criminal justice agency
129 coordination with Federal Government on unauthorized



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130 immigration.-

131 (1) LEGISLATIVE INTENT.—It is the intent of the Legislature
132 that law enforcement and criminal justice agencies in this state
133 work cooperatively with the Federal Government in the
134 identification of unauthorized immigrants and the enforcement of
135 immigration laws. It further is the intent of the Legislature to
136 maximize opportunities to transfer responsibility for the
137 custody and detention of unauthorized immigrants who are accused
138 or convicted of crimes from state and local governments to the
139 Federal Government in order to ensure the safety of the
140 residents of this state and to reduce costs to the criminal
141 justice system, while also protecting the due process rights of
142 individuals accused or convicted of crimes.

143 (2) DELEGATED ENFORCEMENT AUTHORITY.—

144 (a)1. The Department of Corrections shall request from the
145 United States Department of Homeland Security approval to enter
146 into a memorandum of agreement to have employees or contractors
147 of the Department of Corrections trained by the Department of
148 Homeland Security as jail enforcement officers under s. 287(g)
149 of the federal Immigration and Nationality Act. The Department
150 of Corrections shall perform all actions reasonably necessary to
151 meet its obligations under the agreement.

152 2. The Department of Corrections shall report by November
153 1, 2011, to the Governor, the President of the Senate, and the
154 Speaker of the House of Representatives on the status of
155 implementation of this paragraph. If the department has not
156 entered into a memorandum of agreement with the Department of
157 Homeland Security by that date, the department shall identify in
158 the report any barriers to full implementation of this



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159 paragraph.

160 3. By February 1 of each year, the Department of
161 Corrections shall report to the Governor, the President of the
162 Senate, and the Speaker of the House of Representatives on the
163 enforcement activities conducted under this paragraph,
164 including, but not limited to, the number of inmates identified
165 as being unauthorized immigrants, placed in federal custody, or
166 deported.

167 (b)1. The Department of Law Enforcement shall request from
168 the United States Department of Homeland Security approval to
169 enter into a memorandum of agreement to have employees of the
170 Department of Law Enforcement trained by the Department of
171 Homeland Security as task force officers under s. 287(g) of the
172 federal Immigration and Nationality Act. The Department of Law
173 Enforcement shall perform all actions reasonably necessary to
174 meet its obligations under the agreement.

175 2. By February 1 of each year, the Department of Law
176 Enforcement shall report to the Governor, the President of the
177 Senate, and the Speaker of the House of Representatives on the
178 enforcement activities conducted under this paragraph.

179 (c)1. The sheriff of each county shall evaluate the
180 feasibility of entering into a memorandum of agreement with the
181 United States Department of Homeland Security to have employees
182 of the sheriff trained by the Department of Homeland Security as
183 jail enforcement officers or task force officers under s. 287(g)
184 of the federal Immigration and Nationality Act. The Department
185 of Law Enforcement, upon request by a sheriff, shall share
186 information on the department's agreement with the United States
187 Department of Homeland Security and experience in operating



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188 under the agreement.

189 2. The sheriff shall consider, at a minimum:

190 a. The potential fiscal impact on the office of the
191 sheriff;

192 b. The potential impact on the workload and personnel needs
193 of the office; and

194 c. The estimated presence of unauthorized immigrants in the
195 geographic area served by the sheriff.

196 3. If the sheriff determines that entering into an
197 agreement is feasible, the sheriff shall make an initial request
198 for an agreement to the Department of Homeland Security. Nothing
199 in this paragraph compels the sheriff to execute an agreement.

200 (3) IDENTIFICATION UPON ARREST AND CONFINEMENT.—

201 (a) When a person is confined in a jail, prison, or other
202 criminal detention facility, the arresting agency shall make a
203 reasonable effort to determine the nationality of the person and
204 whether the person is present in the United States lawfully,
205 including, but not limited to, participating in the submission
206 of fingerprints pursuant to the agreement under paragraph (b).
207 If the arresting agency establishes, independent of the
208 submission of fingerprints, that the person is not lawfully
209 present in the United States, the agency shall notify the United
210 States Department of Homeland Security.

211 (b) The Department of Law Enforcement shall enter into, and
212 perform all actions reasonably necessary to meet its obligations
213 under, a memorandum of agreement with the Department of Homeland
214 Security to implement a program through which fingerprints
215 submitted by local law enforcement agencies during the arrest
216 and booking process are checked against federal databases in



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217 order to assess the immigration status of individuals in
218 custody.

219 (c) This subsection may not be construed to deny a person
220 bond or to prevent release of a person from confinement if the
221 person is otherwise eligible for release. However, for the
222 purpose of the bail determination required by s. 903.046,
223 Florida Statutes, a determination that the person is not present
224 in the United States lawfully raises a presumption that there is
225 a risk of flight to avoid prosecution. Upon receiving a detainer
226 request from the Department of Homeland Security relating to a
227 person not present in the United States lawfully, a jail,
228 prison, or other criminal detention facility may detain the
229 person for up to 48 additional hours after the person is
230 otherwise entitled to be released.

231 Section 5. Section 945.80, Florida Statutes, is created to
232 read:

233 945.80 Removal and deportation of criminal aliens.—

234 (1) Notwithstanding any law to the contrary, and pursuant
235 to s. 241(a)(4)(B)(ii) of the federal Immigration and
236 Nationality Act, the secretary of the department shall release a
237 prisoner to the custody and control of the United States
238 Immigration and Customs Enforcement if:

239 (a) The prisoner was convicted of a nonviolent offense;

240 (b) The department has received a final order of removal
241 for the prisoner from the United States Immigration and Customs
242 Enforcement; and

243 (c) The secretary determines that removal is appropriate
244 and in the best interest of the state.

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246 A person is ineligible for release under this section if he
247 or she would be ineligible for control release under s.
248 947.146(3)(a)-(m).

249 (2)(a) The department shall identify, during the inmate-
250 reception process and among the existing inmate population,
251 prisoners who are eligible for removal under this section and
252 determine whether removal is appropriate and in the best
253 interest of the state.

254 (b) The department shall coordinate with federal
255 authorities to determine the eligibility of a prisoner for
256 removal and to obtain a final order of removal.

257 (3) Upon approval for removal of the prisoner under this
258 section, the department shall establish a release date for the
259 prisoner to be transferred to federal custody. The department
260 shall maintain exclusive control of and responsibility for the
261 custody and transportation of the prisoner until the prisoner is
262 physically transferred to federal custody.

263 (4)(a) If a prisoner who is released under this section
264 returns unlawfully to the United States, upon notice from any
265 state or federal law enforcement agency that the prisoner is
266 incarcerated, the secretary shall revoke the release of the
267 prisoner and seek the return of the prisoner to the custody of
268 the department in order to serve the remainder of the sentence
269 imposed by the court. The prisoner is not eligible for probation
270 or community control with respect to any sentence affected by
271 the release under this section.

272 (b) The department shall notify each prisoner who is
273 eligible for removal of the provisions of this subsection.

274 (5) The secretary of the department may enter into an



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275 agreement with the United States Department of Homeland Security
276 regarding the rapid repatriation of removable custodial aliens
277 from the United States pursuant to this section.

278 (6) The department shall compile statistics on
279 implementation of this section, including, but not limited to:

280 (a) The number of prisoners who are transferred to federal
281 custody;

282 (b) The number of prisoners who reenter the United States;
283 and

284 (c) The annual cost-avoidance achieved.

285 (7) To the extent practicable, this section applies to all
286 prisoners actually in confinement on, and all prisoners taken
287 into confinement after, July 1, 2011.

288 Section 6. (1) The Legislature finds that the costs
289 incurred by the state related to unauthorized immigration are
290 exacerbated by the failure of the Federal Government to enforce
291 immigration laws adequately and to adopt and implement
292 comprehensive reforms to immigration laws in order to control
293 and contain unauthorized immigration more effectively.

294 (2) (a) The Agency for Workforce Innovation, in consultation
295 with the Office of Economic and Demographic Research, shall
296 prepare a report by December 1, 2011, quantifying the costs to
297 the state which are attributable to unauthorized immigration.
298 The agency shall submit the report to the Governor, the
299 President of the Senate, and the Speaker of the House of
300 Representatives by that date.

301 (b) Before January 1, 2012, the director of the Agency for
302 Workforce Innovation shall, in consultation with the Office of
303 the Governor, submit to the appropriate federal agency or



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304 official a request, based on the total costs quantified under
305 paragraph (a), for reimbursement to the state of those costs or
306 a corresponding reduction in or forgiveness of any debt,
307 interest payments, or other moneys owed by the state to the
308 Federal Government as a result of borrowing from the Federal
309 Government to fund unemployment compensation claims.

310 Section 7. This act shall take effect July 1, 2011.

311
312
313 ===== T I T L E A M E N D M E N T =====

314 And the title is amended as follows:

315 Delete everything before the enacting clause
316 and insert:

317 A bill to be entitled

318 An act relating to unauthorized immigrants; directing the
319 Division of Statutory Revision to designate specified new
320 statutory sections as part III of ch. 448, F.S., and name the
321 part "Unauthorized Immigrants"; creating s. 448.30, F.S.;
322 defining terms; creating s. 448.31, F.S.; requiring every
323 employer to use the federal program for electronic verification
324 of employment eligibility in order to verify the employment
325 eligibility of each employee hired on or after a specified date;
326 providing an exception for employers who request and receive
327 from the employee certain driver's licenses or identification
328 cards; providing that an employer who does not comply with the
329 employment requirements is subject to the suspension of any
330 license held by the employer; providing that an employer is not
331 liable for terminating an employee under certain conditions;
332 providing legislative intent for law enforcement and criminal



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333 justice agencies to coordinate with the Federal Government on
334 the identification of unauthorized immigrants and enforcement of
335 immigration laws; directing the Department of Corrections and
336 the Department of Law Enforcement to pursue and maintain
337 agreements with the United States Department of Homeland
338 Security for the training of certain personnel related to the
339 enforcement of immigration laws; requiring reports on activity
340 under the agreements; directing sheriffs to evaluate the
341 feasibility of entering into such agreements; directing
342 arresting agencies to make reasonable efforts to determine
343 whether arrestees are present in the United States lawfully;
344 requiring the Department of Law Enforcement to enter into and
345 maintain an agreement with the United States Department of
346 Homeland Security for checking fingerprints of arrestees against
347 federal databases to determine immigration status; providing for
348 a presumption as to risk of flight in order to avoid
349 prosecution; authorizing detention of a person for up to 48
350 additional hours upon request from the United States Department
351 of Homeland Security; creating s. 945.80, F.S.; requiring the
352 Department of Corrections to release nonviolent inmates to the
353 custody of the United States Immigration and Customs Enforcement
354 under certain circumstances; requiring the department to
355 identify inmates who are eligible for removal and deportation;
356 establishing certain procedures for the transfer of an inmate to
357 federal custody; providing for a released inmate to serve the
358 remainder of his or her sentence upon unlawfully returning to
359 the United States; authorizing the secretary of the department
360 to enter into an agreement with the United States Department of
361 Homeland Security regarding the rapid repatriation of removable



362 custodial aliens; requiring the department to compile
363 statistics; providing for applicability; providing legislative
364 findings related to costs incurred by the state from
365 unauthorized immigration; requiring the Agency for Workforce
366 Innovation to prepare a report quantifying the costs; requiring
367 the director of the agency to submit to the Federal Government a
368 request for reimbursement of the costs or a reduction in moneys
369 owed to the Federal Government as a result of borrowing to fund
370 unemployment compensation claims; providing an effective date.

371
372 WHEREAS, under federal immigration law, employers must
373 verify the identity and employment authorization of each person
374 they hire, and

375 WHEREAS, in verifying the identity and employment
376 authorization of new employees, employers must complete the
377 federal Form I-9, and

378 WHEREAS, to improve the accuracy of this process, the
379 federal government operates an electronic employment
380 verification system called E-Verify, and

381 WHEREAS, requiring employers to use E-Verify for each new
382 employee will promote the state's interest in ensuring that only
383 those who are authorized to work in the United States are
384 employed in this state, and

385 WHEREAS, one of the recognized shortcomings of the E-Verify
386 Program is the fact that unauthorized workers may attempt to
387 obtain employment by committing identity fraud not detected by
388 the E-Verify Program, and

389 WHEREAS, authentication equipment and software will help
390 employers detect fraudulent driver's licenses or identification



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391 cards, and

392 WHEREAS, requiring employers to employ such equipment and
393 software in the case of each new employee, as an alternative to
394 registering with the E-Verify Program, will enhance the process
395 of verifying identity and combating fraud, and

396 WHEREAS, the rapid removal and deportation of nonviolent
397 criminal aliens who are in the state prison system will reduce
398 fiscal costs for the state and promote public safety, and

399 WHEREAS, it is in the best interests of the state to seek
400 reimbursement or other financial remuneration from the federal
401 government for costs incurred by the state related to
402 unauthorized immigration, NOW, THEREFORE,