

HB 39C

2010C

1 A bill to be entitled
2 An act relating to enforcement of laws; creating chapter
3 820, F.S., entitled "Illegal Immigration"; creating s.
4 820.01, F.S.; providing legislative intent; creating s.
5 820.02, F.S.; providing for construction and
6 implementation of provisions; creating s. 820.03, F.S.;
7 prohibiting state or local government policies that limit
8 or restrict the enforcement of federal immigration laws to
9 less than the full extent permitted by federal law;
10 requiring that when lawful contact is made with a person
11 by a law enforcement officer and reasonable suspicion
12 exists that the person is an alien who is unlawfully
13 present in the United States, a reasonable attempt shall
14 be made to determine the person's immigration status;
15 requiring transfer of unlawfully present persons convicted
16 of offenses to custody of the United States upon discharge
17 from imprisonment or assessment of fine; allowing
18 warrantless arrests of certain persons; prohibiting
19 restrictions concerning information relating to the
20 immigration status of any individual or exchanging that
21 information with any other governmental entity for certain
22 purposes; providing for individual actions to challenge a
23 governmental policy that limits or restricts the
24 enforcement of federal immigration laws; providing for
25 costs, attorney fees, and civil penalties; providing
26 indemnity for law enforcement officers for certain
27 actions; providing an exception; creating s. 820.04, F.S.;;
28 prohibiting trespassing by aliens not legally present;

HB 39C

2010C

29 providing for determination of an alien's immigration
30 status; providing for additional assessments; providing
31 for disposition of assessments; providing criminal
32 penalties; providing enhanced penalties for certain
33 violations; creating s. 820.05, F.S.; prohibiting
34 transporting into this state an individual who the person
35 knows, or should know, is illegally entering the United
36 States from another country; providing criminal penalties;
37 prohibiting intentionally engaging in the smuggling of
38 human beings for profit or commercial purpose; providing
39 criminal penalties; providing enhanced penalties for
40 certain violations; providing that provisions relating to
41 attempt, solicitation, and conspiracy do not apply to
42 certain violations; authorizing a law enforcement officer
43 to lawfully stop any person who is operating a motor
44 vehicle if the officer has reasonable suspicion to believe
45 the person is in violation of any noncriminal traffic law
46 and smuggling provisions; creating s. 820.06, F.S.;
47 providing definitions; prohibiting unlawful stopping to
48 hire and pick up persons for work; prohibiting unlawful
49 application, solicitation, or employment by persons not
50 lawfully present in the United States; providing criminal
51 penalties; creating s. 820.07, F.S.; prohibiting the
52 unlawful transporting, moving, concealing, harboring, or
53 shielding of unlawful aliens; providing for seizure and
54 forfeiture of specified property; providing criminal
55 penalties; providing enhanced penalties for certain
56 violations; creating s. 820.08, F.S.; prohibiting

HB 39C

2010C

57 | knowingly employing unauthorized aliens; requiring the
58 | Attorney General to prescribe a complaint form to allege
59 | violations; providing for investigation of complaints;
60 | prohibiting false reports of violations; providing
61 | criminal penalties; requiring specified actions if the
62 | complaint is determined not to be false and frivolous;
63 | providing for actions for violations; providing for
64 | sanctions for violators; requiring suspension of licenses
65 | of an employer found to have committed a violation if a
66 | specified affidavit is not filed within the required
67 | period; requiring permanent revocation of employer
68 | licenses for second violations; requiring the Attorney
69 | General to maintain copies of specified court orders;
70 | requiring that only the Federal Government's determination
71 | as to whether an employee is an unauthorized alien be
72 | considered; creating a rebuttable presumption in favor of
73 | employers verifying the employment authorization of an
74 | employee through a specified program; providing an
75 | affirmative defense for employers complying with specified
76 | federal law provisions; providing requirements for an
77 | employer defense of entrapment; creating s. 820.09, F.S.;
78 | prohibiting intentionally employing unauthorized aliens;
79 | requiring the Attorney General to prescribe a complaint
80 | form to allege violations; providing for investigation of
81 | complaints; prohibiting false reports of violations;
82 | providing criminal penalties; requiring specified actions
83 | if the complaint is determined not to be false and
84 | frivolous; providing for actions for violations; providing

85 | for sanctions for violators, including suspension of
86 | licenses of an employer found to have committed a
87 | violation; requiring permanent revocation of employer
88 | licenses for second violations; requiring the Attorney
89 | General to maintain copies of specified court orders;
90 | requiring that only the Federal Government's determination
91 | as to whether an employee is an unauthorized alien be
92 | considered; creating a rebuttable presumption in favor of
93 | employers verifying the employment authorization of an
94 | employee through a specified program; providing an
95 | affirmative defense for employers complying with specified
96 | federal law provisions; providing requirements for an
97 | employer defense of entrapment; creating s. 820.101, F.S.;;
98 | requiring employers to verify employment eligibility of
99 | new employees through a specified federal program and keep
100 | specified records; requiring that employers that
101 | participate in an economic development incentive from a
102 | governmental entity participate in a specified federal
103 | program for verification of employee eligibility and
104 | maintain specified records; providing definitions;
105 | requiring the Attorney General to periodically obtain a
106 | list of employers from this state that are registered with
107 | a specified federal employment verification program and
108 | make the list available on the Internet; creating s.
109 | 932.709, F.S.; providing for removal and immobilization or
110 | impoundment of vehicles in specified circumstances;
111 | providing exceptions; requiring immobilization or
112 | impoundment for a specified period in certain

HB 39C

2010C

113 | circumstances; providing for hearings; creating s.
 114 | 943.0425, F.S.; creating the Gang and Immigration
 115 | Intelligence and Enforcement Account within the Department
 116 | of Law Enforcement Operating Trust Fund; providing
 117 | purposes for funds; repealing s. 787.07, F.S., relating to
 118 | human smuggling; providing an effective date.

119 |
 120 | Be It Enacted by the Legislature of the State of Florida:
 121 |

122 | Section 1. Short title.—This act may be cited as the
 123 | "Support Our Law Enforcement and Safe Neighborhoods Act."

124 | Section 2. Chapter 820, Florida Statutes, consisting of
 125 | sections 820.01, 820.02, 820.03, 820.04, 820.05, 820.06, 820.07,
 126 | 820.08, 820.09, and 820.101, is created to read:

127 | CHAPTER 820

128 | ILLEGAL IMMIGRATION

129 | 820.01 Intent.—The Legislature finds that there is a
 130 | compelling interest in the cooperative enforcement of federal
 131 | immigration laws throughout the state. The Legislature declares
 132 | that the intent of this chapter is to make attrition through
 133 | enforcement the public policy of all state and local government
 134 | agencies. The provisions of this chapter are intended to work
 135 | together to discourage and deter the unlawful entry and presence
 136 | of and economic activity by persons unlawfully present in the
 137 | United States.

138 | 820.02 Construction and implementation.—

139 | (1) The terms of this chapter regarding immigration shall
 140 | have the same meaning as provided in federal immigration law.

HB 39C

2010C

141 (2) This chapter shall be implemented in a manner
142 consistent with federal laws regulating immigration, protecting
143 the civil rights of all persons, and respecting the privileges
144 and immunities of United States citizens.

145 820.03 Enforcement of immigration laws.—

146 (1) No official or agency of this state or a county, city,
147 town, or other political subdivision of this state may adopt a
148 policy that limits or restricts the enforcement of federal
149 immigration laws to less than the full extent permitted by
150 federal law.

151 (2) For any lawful contact made by a law enforcement
152 official or agency of this state or a county, city, town, or
153 other political subdivision of this state when reasonable
154 suspicion exists that the person is an alien who is unlawfully
155 present in the United States, a reasonable attempt shall be
156 made, when practicable, to determine the immigration status of
157 the person. The person's immigration status shall be verified
158 with the Federal Government pursuant to 8 U.S.C. s. 1373(c).

159 (3) If an alien who is unlawfully present in the United
160 States is convicted of a violation of state or local law, on
161 discharge from imprisonment or assessment of any fine that is
162 imposed the alien shall be transferred immediately to the
163 custody of the United States Immigration and Customs Enforcement
164 or the United States Customs and Border Protection.

165 (4) Notwithstanding any other law, a law enforcement
166 agency may securely transport an alien who is unlawfully present
167 in the United States and who is in the agency's custody to a
168 federal facility in this state or to any other point of transfer

HB 39C

2010C

169 into federal custody that is outside the jurisdiction of the law
170 enforcement agency.

171 (5) A law enforcement officer, without a warrant, may
172 arrest a person if the officer has probable cause to believe
173 that the person has committed any public offense that makes the
174 person removable from the United States.

175 (6) Except as provided in federal law, officials or
176 agencies of this state and any county, city, town, and other
177 political subdivision of this state may not be prohibited or in
178 any way restricted from sending, receiving, or maintaining
179 information relating to the immigration status of any individual
180 or exchanging that information with any other federal, state, or
181 local governmental entity for the following official purposes:

182 (a) Determining eligibility for any public benefit,
183 service, or license provided by any federal, state, or local
184 governmental entity or other political subdivision of this
185 state.

186 (b) Verifying any claim of residence or domicile if
187 determination of residence or domicile is required under the
188 laws of this state or a judicial order issued pursuant to a
189 civil or criminal proceeding in this state.

190 (c) Confirming the identity of any person who is detained.

191 (d) If the person is an alien, determining whether the
192 person is in compliance with the federal registration laws
193 prescribed by Title II, Chapter 7 of the Immigration and
194 Nationality Act, 8 U.S.C. ss. 1301 et seq.

195 (7) A person may bring an action in circuit court to
196 challenge any official or agency of this state or a county,

HB 39C

2010C

197 city, town, or other political subdivision of this state that
 198 adopts or implements a policy that limits or restricts the
 199 enforcement of federal immigration laws to less than the full
 200 extent permitted by federal law. If there is a judicial finding
 201 that an entity has violated this section, the court shall order
 202 any of the following:

203 (a) That the person who brought the action recover court
 204 costs and attorney fees.

205 (b) That the entity pay a civil penalty of not less than
 206 \$1,000 and not more than \$5,000 for each day that the policy has
 207 remained in effect after the filing of an action pursuant to
 208 this subsection.

209 (8) A court shall collect the civil penalty prescribed in
 210 subsection (7) and remit the civil penalty to the Department of
 211 Law Enforcement for deposit in the Gang and Immigration
 212 Intelligence and Enforcement Account within the Department of
 213 Law Enforcement Operating Trust Fund as provided in s. 943.0425.

214 (9) A law enforcement officer is indemnified by the law
 215 enforcement officer's agency against reasonable costs and
 216 expenses, including attorney fees, incurred by the officer in
 217 connection with any action, suit, or proceeding brought pursuant
 218 to this section to which the officer may be a party by reason of
 219 the officer being or having been a member of the law enforcement
 220 agency, except in relation to matters in which the officer acted
 221 in bad faith.

222 820.04 Trespassing by illegal aliens.-

223 (1) In addition to any violation of federal law, a person
 224 commits an illegal trespass if the person is both:

HB 39C

2010C

225 (a) Present on any public or private land in this state.

226 (b) In violation of 8 U.S.C. s. 1304(e) or s. 1306(a).

227 (2) In the enforcement of this section, the final
 228 determination of an alien's immigration status shall be
 229 determined by either:

230 (a) A law enforcement officer who is authorized by the
 231 Federal Government to verify or ascertain an alien's immigration
 232 status.

233 (b) A law enforcement officer or agency communicating with
 234 the United States Immigration and Customs Enforcement or the
 235 United States Customs and Border Protection pursuant to 8 U.S.C.
 236 s. 1373(c).

237 (3) This section does not apply to a person who maintains
 238 authorization from the Federal Government to remain in the
 239 United States.

240 (4) A person who is sentenced pursuant to this section is
 241 not eligible for suspension or commutation of sentence or
 242 release on any basis until the sentence imposed is served.

243 (5) (a) In addition to any other penalty prescribed by law,
 244 the court shall order the person to pay jail costs and an
 245 additional assessment in the following amounts:

246 1. At least \$500 for a first violation.

247 2. Twice the amount specified in subparagraph 1. if the
 248 person was previously subject to an assessment pursuant to this
 249 subsection.

250 (b) A court shall collect the assessments prescribed in
 251 this subsection and remit the assessments to the Gang and
 252 Immigration Intelligence and Enforcement Account within the

HB 39C

2010C

253 Department of Law Enforcement Operating Trust Fund as provided
 254 in s. 943.0425.

255 (6) Except as provided in paragraph (a) or paragraph (b),
 256 a violation of this section is a misdemeanor of the first
 257 degree, punishable as provided in s. 775.082 or s. 775.083. A
 258 violation of this section is:

259 (a) A felony of the third degree, punishable as provided
 260 in s. 775.082, s. 775.083, or s. 775.084, if the person violates
 261 this section while in possession of any of the following:

262 1. Precursor chemicals that are used in the manufacturing
 263 of methamphetamine in violation of s. 893.149.

264 2. A firearm or weapon as defined in s. 790.001.

265 3. Property that is used for the purpose of committing an
 266 act of terrorism as defined in s. 775.30.

267 (b) A felony of the second degree, punishable as provided
 268 in s. 775.082, s. 775.083, or s. 775.084, if the person either:

269 1. Is convicted of a second or subsequent violation of
 270 this section; or

271 2. Within 60 months before the violation, has been removed
 272 from the United States pursuant to 8 U.S.C. s. 1229a or has
 273 accepted a voluntary removal from the United States pursuant to
 274 8 U.S.C. s. 1229c.

275 820.05 Smuggling; classification; definitions.-

276 (1) For the purposes of this section, the term:

277 (a) "Drop house" means property or real property that is
 278 used to facilitate smuggling pursuant to this section.

279 (b) "Family member" means a parent, grandparent, sibling,
 280 or any other person related to a person by consanguinity or
 281 affinity to the second degree.

282 (c) "Procurement of transportation" means any
 283 participation in or facilitation of transportation and includes:

284 1. Providing services that facilitate transportation,
 285 including travel arrangement services or money transmission
 286 services.

287 2. Providing property that facilitates transportation,
 288 including a weapon, a vehicle or other means of transportation,
 289 or false identification, or selling, leasing, renting, or
 290 otherwise making available a drop house.

291 (d) "Smuggling of human beings" means the transportation,
 292 procurement of transportation, or use of property or real
 293 property by a person or an entity that knows or has reason to
 294 know that the person or persons transported or to be transported
 295 are not United States citizens, permanent resident aliens, or
 296 persons otherwise lawfully in this state or have attempted to
 297 enter, entered, or remained in the United States in violation of
 298 law.

299 (2) (a) A person who transports into this state an
 300 individual who the person knows, or should know, is illegally
 301 entering the United States from another country commits a
 302 misdemeanor of the first degree, punishable as provided in s.
 303 775.082 or s. 775.083.

304 (b) A person commits a separate offense for each
 305 individual he or she transports into this state in violation of
 306 this section.

HB 39C

2010C

307 (3) (a) It is unlawful for a person to intentionally engage
308 in the smuggling of human beings for profit or commercial
309 purpose.

310 (b) Except as provided in subparagraph 1. or subparagraph
311 2., a violation of this section is a felony of the third degree,
312 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

313 A violation of this section:

314 1. Is a felony of the second degree, punishable as
315 provided in s. 775.082, s. 775.083, or s. 775.084, if the human
316 being who is smuggled is under 18 years of age and is not
317 accompanied by a family member at least 18 years of age or if
318 the offense involved the use of a deadly weapon or dangerous
319 instrument.

320 2. Is a felony of the first degree, punishable as provided
321 in s. 775.082, s. 775.083, or s. 775.084, if the offense
322 involves the use or threatened use of deadly physical force.

323 (4) Section 777.04 does not apply to a violation of
324 subparagraph (3) (b) 1.

325 (5) Notwithstanding any other law, a law enforcement
326 officer may lawfully stop any person who is operating a motor
327 vehicle if the officer has reasonable suspicion to believe the
328 person is in violation of any noncriminal traffic law and this
329 section.

330 820.06 Unlawful stopping to hire and pick up passengers
331 for work; unlawful application, solicitation, or employment.—

332 (1) For the purposes of this section, the term:

HB 39C

2010C

333 (a) "Solicit" means verbal or nonverbal communication,
334 including a gesture or a nod, that would indicate to a
335 reasonable person that a person is willing to be employed.

336 (b) "Unauthorized alien" means an alien who does not have
337 the legal right or authorization under federal law to work in
338 the United States as described in 8 U.S.C. s. 1324a(h) (3).

339 (2) It is unlawful for an occupant of a motor vehicle that
340 is stopped on a street, roadway, or highway to attempt to hire
341 or hire and pick up passengers for work at a different location
342 if the motor vehicle blocks or impedes the normal movement of
343 traffic.

344 (3) It is unlawful for a person to enter a motor vehicle
345 that is stopped on a street, roadway, or highway in order to be
346 hired by an occupant of the motor vehicle and to be transported
347 to work at a different location if the motor vehicle blocks or
348 impedes the normal movement of traffic.

349 (4) It is unlawful for a person who is unlawfully present
350 in the United States and who is an unauthorized alien to
351 knowingly apply for work, solicit work in a public place, or
352 perform work as an employee or independent contractor in this
353 state.

354 (5) A violation of this section is a misdemeanor of the
355 first degree, punishable as provided in s. 775.082 or s.
356 775.083.

357 820.07 Unlawful transporting, moving, concealing,
358 harboring, or shielding of unlawfully present aliens.-

359 (1) It is unlawful for a person who is in violation of a
360 criminal offense to:

HB 39C

2010C

361 (a) Transport or move or attempt to transport or move in
362 this state an alien who is unlawfully present in the United
363 States in a means of transportation if the person knows or
364 recklessly disregards the fact that the alien has come to, has
365 entered, or remains in the United States in violation of law.

366 (b) Conceal, harbor, or shield or attempt to conceal,
367 harbor, or shield an alien from detection in any place in this
368 state, including any building or any means of transportation, if
369 the person knows or recklessly disregards the fact that the
370 alien has come to, has entered, or remains in the United States
371 in violation of law.

372 (c) Encourage or induce an alien to come to or reside in
373 this state if the person knows or recklessly disregards the fact
374 that such coming to, entering, or residing in this state is or
375 will be in violation of law.

376 (2) A motor vehicle, vessel, or aircraft that is used in
377 the commission of a violation of this section is subject to
378 seizure and forfeiture under s. 932.709.

379 (3) A person who violates this section commits a
380 misdemeanor of the first degree, punishable as provided in s.
381 775.082, and the person is subject to a fine of at least \$1,000
382 and no more than \$5,000, except that a violation of this section
383 that involves 10 or more aliens unlawfully present in the United
384 States is a felony of the third degree, punishable as provided
385 in s. 775.082 or s. 775.084, and the person is subject to a fine
386 of at least \$1,000 and no more than \$2,000 for each such alien
387 who is involved.

388 820.08 Knowingly employing unauthorized aliens; false and
 389 frivolous complaints; license suspension and revocation;
 390 affirmative defense.—

391 (1) An employer may not knowingly employ an unauthorized
 392 alien. If, in the case when an employer uses a contract,
 393 subcontract, or other independent contractor agreement to obtain
 394 the labor of an alien in this state, the employer knowingly
 395 contracts with an unauthorized alien or with a person who
 396 employs or contracts with an unauthorized alien to perform the
 397 labor, the employer violates this subsection.

398 (2) The Attorney General shall prescribe a complaint form
 399 for a person to allege a violation of subsection (1). The
 400 complainant is not required to list the complainant's social
 401 security number on the complaint form or to have the complaint
 402 form notarized. On receipt of a complaint on a prescribed
 403 complaint form that an employer allegedly knowingly employs an
 404 unauthorized alien, the Attorney General or state attorney shall
 405 investigate whether the employer has violated subsection (1). If
 406 a complaint is received but is not submitted on a prescribed
 407 complaint form, the Attorney General or state attorney may
 408 investigate whether the employer has violated subsection (1).
 409 This subsection does not prohibit the filing of an anonymous
 410 complaint that is not submitted on a prescribed complaint form.
 411 The Attorney General or state attorney may not investigate
 412 complaints that are based solely on race, color, or national
 413 origin. A complaint that is submitted to a state attorney shall
 414 be submitted to the state attorney for the county in which the
 415 alleged unauthorized alien is or was employed by the employer.

HB 39C

2010C

416 The county sheriff or any other local law enforcement agency may
417 assist in investigating a complaint. When investigating a
418 complaint, the Attorney General or state attorney shall verify
419 the work authorization of the alleged unauthorized alien with
420 the Federal Government pursuant to 8 U.S.C. s. 1373(c). A state,
421 county, or local official may not attempt to independently make
422 a final determination on whether an alien is authorized to work
423 in the United States. An alien's immigration status or work
424 authorization status shall be verified with the Federal
425 Government pursuant to 8 U.S.C. s. 1373(c). A person who
426 knowingly files a false and frivolous complaint under this
427 subsection commits a misdemeanor of the second degree,
428 punishable as provided in s. 775.082 or s. 775.083.

429 (3) If, after an investigation, the Attorney General or
430 state attorney determines that the complaint is not false and
431 frivolous:

432 (a) The Attorney General or state attorney shall notify
433 the United States Immigration and Customs Enforcement of the
434 unauthorized alien.

435 (b) The Attorney General or state attorney shall notify
436 the local law enforcement agency of the unauthorized alien.

437 (c) If the complaint was originally filed with the
438 Attorney General, the Attorney General shall notify the
439 appropriate state attorney to bring an action pursuant to
440 subsection (4).

441 (4) An action for a violation of subsection (1) shall be
442 brought against an employer by the state attorney in the county
443 where the unauthorized alien employee is or was employed by the

HB 39C

2010C

444 employer. The state attorney may not bring an action against any
445 employer for any violation of subsection (1) that occurs before
446 January 1, 2011. A second violation of this section shall be
447 based only on an unauthorized alien who is or was employed by
448 the employer after an action has been brought for a violation of
449 subsection (1) or s. 820.09(1).

450 (5) For any action in circuit court under this section,
451 the court shall expedite the action, including assigning the
452 hearing at the earliest practicable date.

453 (6) On a finding of a violation of subsection (1):

454 (a) For a first violation, as described in subparagraph
455 (c)1., the court:

456 1. Shall order the employer to terminate the employment of
457 all unauthorized aliens.

458 2. Shall order the employer to be subject to a 3-year
459 probationary period for the business location where the
460 unauthorized alien performed work.

461 3. Shall order the employer to file a signed sworn
462 affidavit with the state attorney within 3 business days after
463 the order is issued. The affidavit shall state that the employer
464 has terminated the employment of all unauthorized aliens in this
465 state and that the employer will not intentionally or knowingly
466 employ an unauthorized alien in this state. The court shall
467 order the appropriate agencies to suspend all licenses subject
468 to this subparagraph that are held by the employer if the
469 employer fails to file a signed sworn affidavit with the state
470 attorney within 3 business days after the order is issued. All
471 licenses that are suspended under this subparagraph shall remain

HB 39C

2010C

472 suspended until the employer files a signed sworn affidavit with
473 the state attorney. Notwithstanding any other law, on filing of
474 the affidavit the suspended licenses shall be reinstated
475 immediately by the appropriate agencies. For the purposes of
476 this subparagraph, the licenses that are subject to suspension
477 under this subparagraph are all licenses that are held by the
478 employer specific to the business location where the
479 unauthorized alien performed work. If the employer does not hold
480 a license specific to the business location where the
481 unauthorized alien performed work, but a license is necessary to
482 operate the employer's business in general, the licenses that
483 are subject to suspension under this subparagraph are all
484 licenses that are held by the employer at the employer's primary
485 place of business. On receipt of the court's order and
486 notwithstanding any other law, the appropriate agencies shall
487 suspend the licenses according to the court's order. The court
488 shall send a copy of the court's order to the Attorney General
489 and the Attorney General shall maintain the copy pursuant to
490 subsection (7).

491 4. May order the appropriate agencies to suspend all
492 licenses described in subparagraph 3. that are held by the
493 employer for a period not to exceed 10 business days. The court
494 shall base its decision to suspend under this subparagraph on
495 any evidence or information submitted to it during the action
496 for a violation of this subsection and shall consider the
497 following factors, if relevant:

498 a. The number of unauthorized aliens employed by the
499 employer.

- 500 b. Any prior misconduct by the employer.
- 501 c. The degree of harm resulting from the violation.
- 502 d. Whether the employer made good faith efforts to comply
 503 with any applicable requirements.
- 504 e. The duration of the violation.
- 505 f. The role of the directors, officers, or principals of
 506 the employer in the violation.
- 507 g. Any other factors the court deems appropriate.
- 508 (b) For a second violation, as described in paragraph
 509 (c)2., the court shall order the appropriate agencies to
 510 permanently revoke all licenses that are held by the employer
 511 specific to the business location where the unauthorized alien
 512 performed work. If the employer does not hold a license specific
 513 to the business location where the unauthorized alien performed
 514 work, but a license is necessary to operate the employer's
 515 business in general, the court shall order the appropriate
 516 agencies to permanently revoke all licenses that are held by the
 517 employer at the employer's primary place of business. On receipt
 518 of the order and notwithstanding any other law, the appropriate
 519 agencies shall immediately revoke the licenses.
- 520 (c) The violation shall be considered:
- 521 1. A first violation by an employer at a business location
 522 if the violation did not occur during a probationary period
 523 ordered by the court under this subsection or s. 820.09(6) for
 524 that employer's business location.
- 525 2. A second violation by an employer at a business
 526 location if the violation occurred during a probationary period

HB 39C

2010C

527 ordered by the court under this subsection or s. 820.09(6) for
528 that employer's business location.

529 (7) The Attorney General shall maintain copies of court
530 orders that are received pursuant to subsection (6) and shall
531 maintain a database of the employers and business locations that
532 have a first violation of subsection (1) and make the court
533 orders available on the Attorney General's website.

534 (8) On determining whether an employee is an unauthorized
535 alien, the court shall consider only the Federal Government's
536 determination pursuant to 8 U.S.C. s. 1373(c). The Federal
537 Government's determination creates a rebuttable presumption of
538 the employee's lawful status. The court may take judicial notice
539 of the Federal Government's determination and may request the
540 Federal Government to provide automated or testimonial
541 verification pursuant to 8 U.S.C. s. 1373(c).

542 (9) For the purposes of this section, proof of the E-
543 Verify program creates a rebuttable presumption that an employer
544 did not knowingly employ an unauthorized alien.

545 (10) For the purposes of this section, an employer that
546 establishes that it has complied in good faith with the
547 requirements of 8 U.S.C. s. 1324a(b) establishes an affirmative
548 defense that the employer did not knowingly employ an
549 unauthorized alien. An employer is considered to have complied
550 with the requirements of 8 U.S.C. s. 1324a(b), notwithstanding
551 an isolated, sporadic, or accidental technical or procedural
552 failure to meet the requirements, if there is a good faith
553 attempt to comply with the requirements.

HB 39C

2010C

554 (11) It is an affirmative defense to a violation of
555 subsection (1) that the employer was entrapped. To claim
556 entrapment, the employer must admit by the employer's testimony
557 or other evidence the substantial elements of the violation. An
558 employer who asserts an entrapment defense has the burden of
559 proving the following by clear and convincing evidence:

560 (a) The idea of committing the violation started with law
561 enforcement officers or their agents rather than with the
562 employer.

563 (b) The law enforcement officers or their agents urged and
564 induced the employer to commit the violation.

565 (c) The employer was not predisposed to commit the
566 violation before the law enforcement officers or their agents
567 urged and induced the employer to commit the violation.

568 (12) An employer does not establish entrapment if the
569 employer was predisposed to violate subsection (1) and the law
570 enforcement officers or their agents merely provided the
571 employer with an opportunity to commit the violation. It is not
572 entrapment for law enforcement officers or their agents merely
573 to use a ruse or to conceal their identity. The conduct of law
574 enforcement officers and their agents may be considered in
575 determining if an employer has proven entrapment.

576 820.09 Intentionally employing unauthorized aliens; false
577 and frivolous complaints; license suspension and revocation;
578 affirmative defense.—

579 (1) An employer may not intentionally employ an
580 unauthorized alien. If, in the case when an employer uses a
581 contract, subcontract, or other independent contractor agreement

HB 39C

2010C

582 to obtain the labor of an alien in this state, the employer
583 intentionally contracts with an unauthorized alien or with a
584 person who employs or contracts with an unauthorized alien to
585 perform the labor, the employer violates this subsection.

586 (2) The Attorney General shall prescribe a complaint form
587 for a person to allege a violation of subsection (1). The
588 complainant shall not be required to list the complainant's
589 social security number on the complaint form or to have the
590 complaint form notarized. On receipt of a complaint on a
591 prescribed complaint form that an employer allegedly
592 intentionally employs an unauthorized alien, the Attorney
593 General or state attorney shall investigate whether the employer
594 has violated subsection (1). If a complaint is received but is
595 not submitted on a prescribed complaint form, the Attorney
596 General or state attorney may investigate whether the employer
597 has violated subsection (1). This subsection does not prohibit
598 the filing of anonymous complaints that are not submitted on a
599 prescribed complaint form. The Attorney General or state
600 attorney may not investigate complaints that are based solely on
601 race, color, or national origin. A complaint that is submitted
602 to a state attorney shall be submitted to the state attorney for
603 the county in which the alleged unauthorized alien is or was
604 employed by the employer. The county sheriff or any other local
605 law enforcement agency may assist in investigating a complaint.
606 When investigating a complaint, the Attorney General or state
607 attorney shall verify the work authorization of the alleged
608 unauthorized alien with the Federal Government pursuant to 8
609 U.S.C. s. 1373(c). A state, county, or local official shall not

HB 39C

2010C

610 attempt to independently make a final determination on whether
611 an alien is authorized to work in the United States. An alien's
612 immigration status or work authorization status shall be
613 verified with the Federal Government pursuant to 8 U.S.C. s.
614 1373(c). A person who knowingly files a false and frivolous
615 complaint under this subsection commits a misdemeanor of the
616 second degree, punishable as provided in s. 775.082 or s.
617 775.083.

618 (3) If, after an investigation, the Attorney General or
619 state attorney determines that the complaint is not false and
620 frivolous:

621 (a) The Attorney General or state attorney shall notify
622 the United States Immigration and Customs Enforcement of the
623 unauthorized alien.

624 (b) The Attorney General or state attorney shall notify
625 the local law enforcement agency of the unauthorized alien.

626 (c) The Attorney General shall notify the appropriate
627 state attorney to bring an action pursuant to subsection (4) if
628 the complaint was originally filed with the Attorney General.

629 (4) An action for a violation of subsection (1) must be
630 brought against the employer by the state attorney in the county
631 where the unauthorized alien employee is or was employed by the
632 employer. The state attorney may not bring an action against any
633 employer for any violation of subsection (1) that occurs before
634 January 1, 2011. A second violation of this section shall be
635 based only on an unauthorized alien who is or was employed by
636 the employer after an action has been brought for a violation of
637 subsection (1) or s. 820.08(1).

638 (5) For any action in circuit court under this section,
 639 the court shall expedite the action, including assigning the
 640 hearing at the earliest practicable date.

641 (6) On a finding of a violation of subsection (1):

642 (a) For a first violation, as described in subparagraph
 643 (c)1., the court shall:

644 1. Order the employer to terminate the employment of all
 645 unauthorized aliens.

646 2. Order the employer to be subject to a 5-year
 647 probationary period for the business location where the
 648 unauthorized alien performed work.

649 3. Order the appropriate agencies to suspend all licenses
 650 described in 10 days. The court shall base its decision on the
 651 length of the suspension under this subparagraph on any evidence
 652 or information submitted to it during the action for a violation
 653 of this subsection and shall consider the following factors, if
 654 relevant:

655 a. The number of unauthorized aliens employed by the
 656 employer.

657 b. Any prior misconduct by the employer.

658 c. The degree of harm resulting from the violation.

659 d. Whether the employer made good faith efforts to comply
 660 with any applicable requirements.

661 e. The duration of the violation.

662 f. The role of the directors, officers, or principals of
 663 the employer in the violation.

664 g. Any other factors the court deems appropriate.

HB 39C

2010C

665 4. Order the employer to file a signed sworn affidavit
666 with the state attorney. The affidavit shall state that the
667 employer has terminated the employment of all unauthorized
668 aliens in this state and that the employer will not
669 intentionally or knowingly employ an unauthorized alien in this
670 state. The court shall order the appropriate agencies to suspend
671 all licenses subject to this subparagraph that are held by the
672 employer if the employer fails to file a signed sworn affidavit
673 with the state attorney within 3 business days after the order
674 is issued. All licenses that are suspended under this
675 subparagraph for failing to file a signed sworn affidavit shall
676 remain suspended until the employer files a signed sworn
677 affidavit with the state attorney. For the purposes of this
678 subparagraph, the licenses that are subject to suspension under
679 this subparagraph are all licenses that are held by the employer
680 specific to the business location where the unauthorized alien
681 performed work. If the employer does not hold a license specific
682 to the business location where the unauthorized alien performed
683 work, but a license is necessary to operate the employer's
684 business in general, the licenses that are subject to suspension
685 under this subparagraph are all licenses that are held by the
686 employer at the employer's primary place of business. On receipt
687 of the court's order and notwithstanding any other law, the
688 appropriate agencies shall suspend the licenses according to the
689 court's order. The court shall send a copy of the court's order
690 to the Attorney General and the Attorney General shall maintain
691 the copy pursuant to subsection (7).

HB 39C

2010C

692 (b) For a second violation as described in subparagraph
693 (c)2., the court shall order the appropriate agencies to
694 permanently revoke all licenses that are held by the employer
695 specific to the business location where the unauthorized alien
696 performed work. If the employer does not hold a license specific
697 to the business location where the unauthorized alien performed
698 work, but a license is necessary to operate the employer's
699 business in general, the court shall order the appropriate
700 agencies to permanently revoke all licenses that are held by the
701 employer at the employer's primary place of business. On receipt
702 of the order and notwithstanding any other law, the appropriate
703 agencies shall immediately revoke the licenses.

704 (c) The violation shall be considered:

705 1. A first violation by an employer at a business location
706 if the violation did not occur during a probationary period
707 ordered by the court under this subsection or s. 820.08(6) for
708 that employer's business location.

709 2. A second violation by an employer at a business
710 location if the violation occurred during a probationary period
711 ordered by the court under this subsection or s. 820.08(6) for
712 that employer's business location.

713 (7) The Attorney General shall maintain copies of court
714 orders that are received pursuant to subsection (6) and shall
715 maintain a database of the employers and business locations that
716 have a first violation of subsection (1) and make the court
717 orders available on the Attorney General's website.

718 (8) On determining whether an employee is an unauthorized
719 alien, the court shall consider only the Federal Government's

HB 39C

2010C

720 determination pursuant to 8 U.S.C. s. 1373(c). The Federal
721 Government's determination creates a rebuttable presumption of
722 the employee's lawful status. The court may take judicial notice
723 of the Federal Government's determination and may request the
724 Federal Government to provide automated or testimonial
725 verification pursuant to 8 U.S.C. s. 1373(c).

726 (9) For the purposes of this section, proof of verifying
727 the employment authorization of an employee through the E-Verify
728 program creates a rebuttable presumption that an employer did
729 not intentionally employ an unauthorized alien.

730 (10) For the purposes of this section, an employer that
731 establishes that it has complied in good faith with the
732 requirements of 8 U.S.C. s. 1324a(b) establishes an affirmative
733 defense that the employer did not intentionally employ an
734 unauthorized alien. An employer is considered to have complied
735 with the requirements of 8 U.S.C. s. 1324a(b), notwithstanding
736 an isolated, sporadic, or accidental technical or procedural
737 failure to meet the requirements, if there is a good faith
738 attempt to comply with the requirements.

739 (11) It is an affirmative defense to a violation of
740 subsection (1) that the employer was entrapped. To claim
741 entrapment, the employer must admit by the employer's testimony
742 or other evidence the substantial elements of the violation. An
743 employer who asserts an entrapment defense has the burden of
744 proving the following by clear and convincing evidence:

745 (a) The idea of committing the violation started with law
746 enforcement officers or their agents rather than with the
747 employer.

HB 39C

2010C

748 (b) The law enforcement officers or their agents urged and
749 induced the employer to commit the violation.

750 (c) The employer was not predisposed to commit the
751 violation before the law enforcement officers or their agents
752 urged and induced the employer to commit the violation.

753 (12) An employer does not establish entrapment if the
754 employer was predisposed to violate subsection (1) and the law
755 enforcement officers or their agents merely provided the
756 employer with an opportunity to commit the violation. It is not
757 entrapment for law enforcement officers or their agents merely
758 to use a ruse or to conceal their identity. The conduct of law
759 enforcement officers and their agents may be considered in
760 determining if an employer has proven entrapment.

761 820.101 Verification of employment eligibility; E-Verify;
762 economic development incentives; list of registered employers.-

763 (1) After December 31, 2010, every employer, after hiring
764 an employee, shall verify the employment eligibility of the
765 employee through the E-Verify program of the Department of
766 Homeland Security and shall keep a record of the verification
767 for the duration of the employee's employment or at least 3
768 years, whichever is longer.

769 (2) In addition to any other requirement for an employer
770 to receive an economic development incentive from a governmental
771 entity, the employer shall register with and participate in the
772 E-Verify program. Before receiving the economic development
773 incentive, the employer shall provide proof to the governmental
774 entity that the employer is registered with and is participating
775 in the E-Verify program. If the governmental entity determines

776 that the employer is not complying with this subsection, the
 777 governmental entity shall notify the employer by certified mail
 778 of the governmental entity's determination of noncompliance and
 779 the employer's right to appeal the determination. On a final
 780 determination of noncompliance, the employer shall repay all
 781 moneys received as an economic development incentive to the
 782 government entity within 30 days after the final determination.
 783 For the purposes of this subsection:

784 (a) "Economic development incentive" means any grant,
 785 loan, or performance-based incentive from any government entity
 786 that is awarded after June 30, 2011. Economic development
 787 incentive does not include any tax provision under Title XIV.

788 (b) "Governmental entity" means this state and any
 789 political subdivision of this state that receives and uses tax
 790 revenues.

791 (3) Every 3 months the Attorney General shall request from
 792 the United States Department of Homeland Security a list of
 793 employers from this state that are registered with the E-Verify
 794 program. On receipt of the list of employers, the Attorney
 795 General shall make the list available on the Attorney General's
 796 website.

797 Section 3. Section 932.709, Florida Statutes, is created
 798 to read:

799 932.709 Removal and immobilization or impoundment of
 800 vehicle.—

801 (1) A law enforcement officer shall cause the removal and
 802 either immobilization or impoundment of a vehicle if the law

803 enforcement officer determines that a person is driving the
 804 vehicle while any of the following applies:

805 (a) The person's driving privilege is suspended or revoked
 806 for any reason.

807 (b) The person has not been issued a valid driver license
 808 or permit by this state and the person does not produce evidence
 809 of ever having a valid driver license or permit issued by
 810 another jurisdiction. This paragraph does not apply to the
 811 operation of an implement of husbandry.

812 (c) The person is subject to an ignition interlock device
 813 requirement pursuant to chapter 316 or chapter 322 and the
 814 person is operating a vehicle without a functioning certified
 815 ignition interlock device. This paragraph does not apply to a
 816 person operating an employer's vehicle under s. 316.1937(7).

817 (d) The person is in violation of a criminal offense and
 818 is transporting, moving, concealing, harboring, or shielding or
 819 attempting to transport, move, conceal, harbor, or shield an
 820 alien in this state in a vehicle if the person knows or
 821 recklessly disregards the fact that the alien has come to, has
 822 entered, or remains in the United States in violation of law.

823 (2) A law enforcement officer shall cause the removal and
 824 impoundment of a vehicle if the law enforcement officer
 825 determines that a person is driving the vehicle and if all of
 826 the following apply:

827 (a) The person's driving privilege is canceled, suspended,
 828 or revoked for any reason or the person has not ever been issued
 829 a driver license or permit by this state and the person does not

HB 39C

2010C

830 produce evidence of ever having a driver license or permit
831 issued by another jurisdiction.

832 (b) The person is not in compliance with the financial
833 responsibility requirements of chapter 324.

834 (c) The person is driving a vehicle that is involved in an
835 accident that results in either property damage or injury to or
836 death of another person.

837 (3) Except as provided in subsection (4), while a law
838 enforcement officer has control of the vehicle the law
839 enforcement officer shall cause the removal and either
840 immobilization or impoundment of the vehicle if the law
841 enforcement officer has probable cause to arrest the driver of
842 the vehicle for a violation of s. 316.193 or s. 322.2616.

843 (4) A law enforcement officer shall not cause the removal
844 and either the immobilization or impoundment of a vehicle
845 pursuant to subsection (3) if all of the following apply:

846 (a) The law enforcement officer determines that the
847 vehicle is currently registered and that the driver or the
848 vehicle is in compliance with the financial responsibility
849 requirements of chapter 324.

850 (b) The spouse of the driver is with the driver at the
851 time of the arrest.

852 (c) The law enforcement officer has reasonable grounds to
853 believe that the spouse of the driver:

854 1. Has a valid driver license.

855 2. Is not impaired by intoxicating liquor, any drug, a
856 vapor-releasing substance containing a toxic substance, or any
857 combination of liquor, drugs, or vapor-releasing substances.

HB 39C

2010C

858 3. Does not have any spirituous liquor in the spouse's
859 body if the spouse is under 21 years of age.

860 (d) The spouse notifies the law enforcement officer that
861 the spouse will drive the vehicle from the place of arrest to
862 the driver's home or other place of safety.

863 (e) The spouse drives the vehicle as prescribed by
864 paragraph (d).

865 (5) Except as otherwise provided in this chapter, a
866 vehicle that is removed and either immobilized or impounded
867 pursuant to subsection (1), subsection (2), or subsection (3)
868 shall be immobilized or impounded for 30 days. An insurance
869 company does not have a duty to pay any benefits for charges or
870 fees for immobilization or impoundment.

871 (6) The owner of a vehicle that is removed and either
872 immobilized or impounded pursuant to subsection (1), subsection
873 (2), or subsection (3), the spouse of the owner, and each person
874 identified on the records of the Department of Highway Safety
875 and Motor Vehicles with an interest in the vehicle shall be
876 provided with an opportunity for an immobilization or
877 poststorage hearing pursuant to s. 316.193(6).

878 Section 4. Section 943.0425, Florida Statutes, is created
879 to read:

880 943.0425 Gang and Immigration Intelligence and Enforcement
881 Account.—There is created a Gang and Immigration Intelligence
882 and Enforcement Account within the Department of Law Enforcement
883 Operating Trust Fund. Funds in the account are subject to
884 legislative appropriation for the purpose of providing emergency
885 supplemental funds to gang and immigration enforcement and for

HB 39C

2010C

886 reimbursement of county jail costs relating to illegal
887 immigration.

888 Section 5. Section 787.07, Florida Statutes, is repealed.

889 Section 6. This act shall take effect January 1, 2011.