

By the Committee on Judiciary

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1 A bill to be entitled
2 An act relating to unauthorized immigrants; directing
3 the Division of Statutory Revision to designate
4 specified new statutory sections as part III of ch.
5 448, F.S., and name the part "Unauthorized
6 Immigrants"; creating s. 448.30, F.S.; defining terms;
7 creating s. 448.31, F.S.; requiring every employer to
8 use the federal program for electronic verification of
9 employment eligibility in order to verify the
10 employment eligibility of each employee hired on or
11 after a specified date; providing an exception in the
12 case of employees who present specified documents to
13 the employer; requiring the Attorney General to
14 request from the Department of Homeland Security a
15 list of employers who are registered with the E-Verify
16 Program and to post that list to the Attorney
17 General's website; providing that an employer who does
18 not comply with the employment requirements is subject
19 to the suspension of any license held by the employer;
20 providing that an employer who terminates an employee
21 under certain conditions is not liable for wrongful
22 termination; providing legislative intent for law
23 enforcement and criminal justice agencies to
24 coordinate with the Federal Government on the
25 identification of unauthorized immigrants and
26 enforcement of immigration laws; directing the
27 Department of Corrections and the Department of Law
28 Enforcement to pursue and maintain agreements with the
29 United States Department of Homeland Security for the

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30 training of certain personnel related to the
31 enforcement of immigration laws; requiring reports on
32 activity under the agreements; directing sheriffs to
33 evaluate the feasibility of entering into such
34 agreements; directing arresting agencies to make
35 reasonable efforts to determine whether arrestees are
36 present in the United States lawfully; requiring the
37 Department of Law Enforcement to enter into and
38 maintain an agreement with the United States
39 Department of Homeland Security for checking
40 fingerprints of arrestees against federal databases to
41 determine immigration status; providing for a
42 presumption as to risk of flight in order to avoid
43 prosecution; creating s. 945.80, F.S.; requiring the
44 Department of Corrections to release nonviolent
45 inmates to the custody of the United States
46 Immigration and Customs Enforcement under certain
47 circumstances; requiring the department to identify
48 inmates who are eligible for removal and deportation;
49 establishing certain procedures for the transfer of an
50 inmate to federal custody; providing for a released
51 inmate to serve the remainder of his or her sentence
52 upon unlawfully returning to the United States;
53 authorizing the secretary of the department to enter
54 into an agreement with the United States Department of
55 Homeland Security regarding the rapid repatriation of
56 removable custodial aliens; requiring the department
57 to compile statistics; providing for applicability;
58 providing legislative findings related to costs

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59 incurred by the state from unauthorized immigration;
60 requiring the Agency for Workforce Innovation to
61 prepare a report quantifying the costs; requiring the
62 director of the agency to submit to the Federal
63 Government a request for reimbursement of the costs or
64 a reduction in moneys owed to the Federal Government
65 as a result of borrowing to fund unemployment
66 compensation claims; providing an effective date.
67

68 Be It Enacted by the Legislature of the State of Florida:
69

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

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

76 448.30 Definitions.—As used in this part, the term:

77 (1) "Agency" means a department, board, bureau, district,
78 commission, authority, or other similar body of this state or a
79 county, municipality, special district, or other political
80 subdivision of this state which issues a license for purposes of
81 operating a business in this state or in any jurisdiction within
82 this state.

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

86 (3) "Employer" means a person or agency that employs one or
87 more employees in this state. In the case of an independent

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88 contractor, the term means the independent contractor and does
89 not mean the person or agency that uses the contract labor.

90 (4) "E-Verify Program" means the program for electronic
91 verification of employment eligibility which is operated by the
92 United States Department of Homeland Security, or any successor
93 program.

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

98 (6) "License" means any license, permit, certificate,
99 approval, registration, charter, or similar form of
100 authorization that is required by law and issued by any agency
101 for the purpose of operating a business in this state. The term
102 includes, but is not limited to, articles of incorporation, a
103 certificate of partnership, a partnership registration, articles
104 of organization, and a transaction privilege tax license.

105 Section 3. Section 448.31, Florida Statutes, is created to
106 read:

107 448.31 Verification of employment eligibility.-

108 (1) An employer who hires a new employee on or after July
109 1, 2012, shall:

110 (a) Register with the E-Verify Program;

111 (b) Upon acceptance on or after that date of an offer of
112 employment by the new employee, verify the employment
113 eligibility of the employee through, and in accordance with the
114 requirements of, the E-Verify Program; and

115 (c) Maintain a record of the verification for 3 years after
116 the date of hire or 1 year after the date employment ends,

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117 whichever is longer.

118 (2) (a) The requirements of subsection (1) do not apply if
119 the new employee presents to the employer one of the following
120 documents as part of the I-9 process for verifying employment
121 eligibility under federal law:

122 1. An unexpired United States passport or United States
123 passport card;

124 2. An unexpired driver's license that is issued by a state
125 or outlying possession of the United States and that contains a
126 photograph of the employee;

127 3. An unexpired foreign passport that contains a United
128 States visa evidencing applicable work authorization and a
129 corresponding unexpired Form I-94; or

130 4. A secure national identification card, or similar
131 document issued pursuant to federal law.

132 (b) The employer shall maintain, for 3 years after the date
133 of hire or 1 year after the date employment ends, whichever is
134 longer, a record of the type of document the employee presented,
135 including a legible photocopy of the document. Photocopies may
136 be used only for the verification process and must be retained
137 with the federal Form I-9.

138 (3) The Attorney General shall quarterly request from the
139 United States Department of Homeland Security a list of
140 employers in this state who are registered with the E-Verify
141 Program. The Attorney General shall make the list available on
142 the website for the Office of the Attorney General but shall
143 include a conspicuous notation that employers who comply with
144 subsection (2) are exempt from the requirement to register with
145 the E-Verify Program.

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146 (4) An employer who fails to comply with this section is
147 subject to the suspension of any license held by the employer
148 through the period of noncompliance. The suspension of a license
149 pursuant to this subsection must comply with the provisions of
150 s. 120.60(5).

151 (5) An employer who terminates an employee in accordance
152 with federal regulations upon a final determination of
153 ineligibility for employment through the E-Verify Program is not
154 liable for wrongful termination.

155 Section 4. Law enforcement and criminal justice agency
156 coordination with Federal Government on unauthorized
157 immigration.-

158 (1) LEGISLATIVE INTENT.-It is the intent of the Legislature
159 that law enforcement and criminal justice agencies in this state
160 work cooperatively with the Federal Government in the
161 identification of unauthorized immigrants and the enforcement of
162 state and federal immigration laws. It further is the intent of
163 the Legislature to maximize opportunities to transfer
164 responsibility for the custody and detention of unauthorized
165 immigrants who are accused or convicted of crimes from state and
166 local governments to the Federal Government in order to ensure
167 the safety of the residents of this state and to reduce costs to
168 the criminal justice system, while also protecting the due
169 process rights of individuals accused or convicted of crimes.

170 (2) DELEGATED ENFORCEMENT AUTHORITY.-

171 (a)1. The Department of Corrections shall request from the
172 United States Department of Homeland Security approval to enter
173 into a memorandum of agreement to have employees or contractors
174 of the Department of Corrections trained by the Department of

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175 Homeland Security as jail enforcement officers under s. 287(g)
176 of the federal Immigration and Nationality Act. The Department
177 of Corrections shall take all actions necessary to maintain the
178 agreement.

179 2. The Department of Corrections shall report by November
180 1, 2011, to the Governor, the President of the Senate, and the
181 Speaker of the House of Representatives on the status of
182 implementation of this paragraph. If the department has not
183 entered into a memorandum of agreement with the Department of
184 Homeland Security by that date, the department shall identify in
185 the report any barriers to full implementation of this
186 paragraph.

187 3. By February 1 of each year, the Department of
188 Corrections shall report to the Governor, the President of the
189 Senate, and the Speaker of the House of Representatives on the
190 enforcement activities conducted under this paragraph,
191 including, but not limited to, the number of inmates identified
192 as being unauthorized immigrants, placed in federal custody, or
193 deported.

194 (b)1. The Department of Law Enforcement shall request from
195 the United States Department of Homeland Security approval to
196 enter into a memorandum of agreement to have employees of the
197 Department of Law Enforcement trained by the Department of
198 Homeland Security as task force officers under s. 287(g) of the
199 federal Immigration and Nationality Act. The Department of Law
200 Enforcement shall take all actions necessary to maintain the
201 agreement.

202 2. By February 1 of each year, the Department of Law
203 Enforcement shall report to the Governor, the President of the

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204 Senate, and the Speaker of the House of Representatives on the
205 enforcement activities conducted under this paragraph.

206 (c) The sheriff of each county shall evaluate the
207 feasibility of entering into a memorandum of agreement with the
208 United States Department of Homeland Security to have employees
209 of the sheriff trained by the Department of Homeland Security as
210 jail enforcement officers or task force officers under s. 287(g)
211 of the federal Immigration and Nationality Act. The Department
212 of Law Enforcement, upon request by a sheriff, shall assist the
213 sheriff with the feasibility evaluation. If the sheriff
214 determines that entering into an agreement is feasible, the
215 sheriff shall make a request for an agreement to the Department
216 of Homeland Security.

217 (3) IDENTIFICATION UPON ARREST.-

218 (a) When a person is confined in a jail, prison, or other
219 criminal detention facility, the arresting agency shall make a
220 reasonable effort to determine the nationality of the person and
221 whether the person is present in the United States lawfully,
222 including, but not limited to, participating in the submission
223 of fingerprints pursuant to the agreement under paragraph (b).
224 If the arresting agency establishes, independent of the
225 submission of fingerprints, that the person is not lawfully
226 present in the United States, the agency shall notify the United
227 States Department of Homeland Security.

228 (b) The Department of Law Enforcement shall enter into, and
229 take all actions necessary to maintain, a memorandum of
230 agreement with the Department of Homeland Security to implement
231 a program through which fingerprints submitted by local law
232 enforcement agencies during the arrest and booking process are

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233 checked against federal databases in order to assess the
234 immigration status of individuals in custody.

235 (c) This subsection may not be construed to deny a person
236 bond or to prevent release of a person from confinement if the
237 person is otherwise eligible for release. However, for the
238 purpose of the bail determination required by s. 903.046,
239 Florida Statutes, a determination that the person is not present
240 in the United States lawfully raises a presumption that there is
241 a risk of flight to avoid prosecution.

242 Section 5. Section 945.80, Florida Statutes, is created to
243 read:

244 945.80 Removal and deportation of criminal aliens.-

245 (1) Notwithstanding any law to the contrary, and pursuant
246 to s. 241(a)(4)(B)(ii) of the federal Immigration and
247 Nationality Act, the secretary of the department shall release a
248 prisoner to the custody and control of the United States
249 Immigration and Customs Enforcement if:

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

251 (b) The department has received a final order of removal
252 for the prisoner from the United States Immigration and Customs
253 Enforcement; and

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

256
257 A person is ineligible for release under this section if he or
258 she would be ineligible for control release under s.
259 947.146(3)(a)-(m).

260 (2)(a) The department shall identify, during the inmate-
261 reception process and among the existing inmate population,

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262 prisoners who are eligible for removal under this section and
263 determine whether removal is appropriate and in the best
264 interest of the state.

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

268 (3) Upon approval for removal of the prisoner under this
269 section, the department shall establish a release date for the
270 prisoner to be transferred to federal custody. The department
271 shall maintain exclusive control of and responsibility for the
272 custody and transportation of the prisoner until the prisoner is
273 physically transferred to federal custody.

274 (4) (a) If a prisoner who is released under this section
275 returns unlawfully to the United States, upon notice from any
276 state or federal law enforcement agency that the prisoner is
277 incarcerated, the secretary shall revoke the release of the
278 prisoner and seek the return of the prisoner to the custody of
279 the department in order to serve the remainder of the sentence
280 imposed by the court. The prisoner is not eligible for probation
281 or community control with respect to any sentence affected by
282 the release under this section.

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

285 (5) The secretary of the department may enter into an
286 agreement with the United States Department of Homeland Security
287 regarding the rapid repatriation of removable custodial aliens
288 from the United States pursuant to this section.

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

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291 (a) The number of prisoners who are transferred to federal
292 custody;

293 (b) The number of prisoners who reenter the United States;
294 and

295 (c) The annual cost-avoidance achieved.

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

299 Section 6. (1) The Legislature finds that the costs
300 incurred by the state related to unauthorized immigration are
301 exacerbated by the failure of the Federal Government to enforce
302 immigration laws adequately and to adopt and implement
303 comprehensive reforms to immigration laws in order to control
304 and contain unauthorized immigration more effectively.

305 (2) (a) The Agency for Workforce Innovation, in consultation
306 with the Office of Economic and Demographic Research, shall
307 prepare a report by December 1, 2011, quantifying the costs to
308 the state which are attributable to unauthorized immigration.
309 The agency shall submit the report to the Governor, the
310 President of the Senate, and the Speaker of the House of
311 Representatives by that date.

312 (b) Before January 1, 2012, the director of the Agency for
313 Workforce Innovation shall, in consultation with the Office of
314 the Governor, submit to the appropriate federal agency or
315 official a request, based on the total costs quantified under
316 paragraph (a), for reimbursement to the state of those costs or
317 a corresponding reduction in or forgiveness of any debt,
318 interest payments, or other moneys owed by the state to the
319 Federal Government as a result of borrowing from the Federal

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320 Government to fund unemployment compensation claims.

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