

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.