

By the Committees on Judiciary; and 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 for  
12          employers who request and receive from the employee  
13          certain driver's licenses or identification cards;  
14          requiring the employers to check the documents using  
15          authentication technology; directing the Department of  
16          Highway Safety and Motor Vehicles to post information  
17          on the website of the department relating to  
18          compliance by states with the federal REAL ID Act of  
19          2005; directing the department to adopt rules relating  
20          to authentication technology; providing that an  
21          employer who does not comply with the employment  
22          requirements is subject to the suspension of any  
23          license held by the employer; providing that an  
24          employer is not liable for terminating an employee  
25          under certain conditions; providing legislative intent  
26          for law enforcement and criminal justice agencies to  
27          coordinate with the Federal Government on the  
28          identification of unauthorized immigrants and  
29          enforcement of immigration laws; authorizing the

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

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

70  
71 WHEREAS, under federal immigration law, employers must  
72 verify the identity and employment authorization of each person  
73 they hire, and

74 WHEREAS, in verifying the identity and employment  
75 authorization of new employees, employers must complete the  
76 federal Form I-9, and

77 WHEREAS, to improve the accuracy of this process, the  
78 Federal Government operates an electronic employment  
79 verification system called E-Verify, and

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

84 WHEREAS, one of the recognized shortcomings of the E-Verify  
85 Program is the fact that unauthorized workers may attempt to  
86 obtain employment by committing identity fraud not detected by  
87 the E-Verify Program, and

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88 WHEREAS, authentication equipment and software will help  
89 employers detect fraudulent driver's licenses or identification  
90 cards, and

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

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

98 WHEREAS, it is in the best interests of the state to seek  
99 reimbursement or other financial remuneration from the Federal  
100 Government for costs incurred by the state related to  
101 unauthorized immigration, NOW, THEREFORE,

102

103 Be It Enacted by the Legislature of the State of Florida:

104

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

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

111 448.30 Definitions.—As used in this part, the term:

112 (1) "Agency" means a department, board, bureau, district,  
113 commission, authority, or other similar body of this state or a  
114 county, municipality, special district, or other political  
115 subdivision of this state which issues a license for purposes of  
116 operating a business in this state or in any jurisdiction within

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117 this state.

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

121 (3) "Employer" means a person or agency that employs one or  
122 more employees in this state. In the case of an independent  
123 contractor, the term means the independent contractor and does  
124 not mean the person or agency that uses the contract labor. The  
125 term does not include an employee leasing company licensed  
126 pursuant to part IX of chapter 468 which enters into a written  
127 agreement or understanding with its client company which places  
128 the primary obligation for compliance with this part upon its  
129 client company. In the absence of a written agreement or  
130 understanding, the contracting party, whether the licensed  
131 employee leasing company or client company that initially hires  
132 the leased employee, is responsible for the obligations set  
133 forth in this part. Such employee leasing company shall, at all  
134 times, remain an employer as otherwise specified by law.

135 (4) "E-Verify Program" means the program for electronic  
136 verification of employment eligibility which is operated by the  
137 United States Department of Homeland Security, or any successor  
138 program.

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

143 (6) "License" means any license, permit, certificate,  
144 approval, registration, charter, or similar form of  
145 authorization that is required by law and issued by any agency

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146 for the purpose of operating a business in this state. The term  
147 includes, but is not limited to, articles of incorporation, a  
148 certificate of partnership, a partnership registration, articles  
149 of organization, and a transaction privilege tax license.

150 Section 3. Section 448.31, Florida Statutes, is created to  
151 read:

152 448.31 Verification of employment eligibility.-

153 (1) An employer who hires a new employee on or after July  
154 1, 2012, shall:

155 (a) Register with the E-Verify Program; use the program for  
156 all new hires, both United States citizens and noncitizens; and  
157 not use the program selectively;

158 (b) Upon acceptance on or after that date of an offer of  
159 employment by the new employee, verify the employment  
160 eligibility of the employee through, and in accordance with the  
161 time periods and other requirements of, the E-Verify Program;  
162 and

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

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

169 1. Requests and receives from the employee a valid driver's  
170 license or identification card that is issued by a state or  
171 outlying possession of the United States and that complies with  
172 the federal REAL ID Act of 2005 and the final rule promulgated  
173 by the United States Department of Homeland Security  
174 implementing that act;

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175 2. Within 3 business days after the first day of work,  
176 swipes the common machine-readable zone on the driver's license  
177 or card using the highest standard of authentication equipment  
178 and software to:

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

180 b. Verify the physical description and other personal  
181 identifying information of the employee who presents the  
182 document against the data contained on the machine-readable  
183 zone;

184 3. Maintains, for 3 years after the date of hire or 1 year  
185 after the date employment ends, whichever is longer, a printed  
186 record of the results of the authentication conducted under this  
187 subsection and a photocopy of the document the employee  
188 presented. The employer shall retain the record and the  
189 photocopy with the federal Form I-9; and

190 4. Complies with the requirements of this subsection for  
191 every new employee, both United States citizens and noncitizens,  
192 unless and until the employer registers with the E-Verify  
193 Program, and does not implement the requirements of this  
194 subsection selectively.

195 (b) The Department of Highway Safety and Motor Vehicles  
196 shall:

197 1. Maintain on the website for the department a list of all  
198 states and outlying possessions of the United States which  
199 comply with the federal REAL ID Act of 2005 and the final rule  
200 promulgated by the United States Department of Homeland Security  
201 implementing that act. For each state or possession, the  
202 department shall specify the type of document that is in  
203 compliance and the date on which the state or possession began

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204 issuing the document that is in compliance.

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

208 (c) The procedures of this subsection are authorized for  
209 the purpose of authenticating a driver's license or  
210 identification card presented by a new employee, combating  
211 fraud, and matching identifying information for the employee  
212 against the document. An employer may not use the procedures to  
213 discriminate on the basis of national origin or citizenship  
214 status, except against a person who is not authorized to work in  
215 the United States. Unless otherwise authorized by law, an  
216 employer may not use information obtained through these  
217 procedures for any purpose unrelated to verifying the identity  
218 and employment authorization of a new employee.

219 (3) An employer who fails to comply with this section is  
220 subject to the suspension of any license held by the employer  
221 through the period of noncompliance. The suspension of a license  
222 pursuant to this subsection by:

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

225 (b) An agency not subject to chapter 120 must comply with  
226 procedures substantially similar to the provisions of s.  
227 120.60(5).

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

230 (a) In accordance with federal regulations upon a final  
231 determination of ineligibility for employment through the E-  
232 Verify Program; or



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233 (b) After complying with subsection (2) and reasonably  
234 concluding that the employee presented a fraudulent document or  
235 that the physical description or other personal identifying  
236 information of the employee who presents the document does not  
237 match the data contained on the machine-readable zone.

238 Section 4. Law enforcement and criminal justice agency  
239 coordination with Federal Government on unauthorized  
240 immigration.-

241 (1) LEGISLATIVE INTENT.-It is the intent of the Legislature  
242 that law enforcement and criminal justice agencies in this state  
243 work cooperatively with the Federal Government in the  
244 identification of unauthorized immigrants and the enforcement of  
245 immigration laws. It further is the intent of the Legislature to  
246 maximize opportunities to transfer responsibility for the  
247 custody and detention of unauthorized immigrants who are accused  
248 or convicted of crimes from state and local governments to the  
249 Federal Government in order to ensure the safety of the  
250 residents of this state and to reduce costs to the criminal  
251 justice system, while also protecting the due process rights of  
252 individuals accused or convicted of crimes.

253 (2) DELEGATED ENFORCEMENT AUTHORITY.-

254 (a)1. The Department of Corrections may request from the  
255 United States Department of Homeland Security approval to enter  
256 into a memorandum of agreement to have employees or contractors  
257 of the Department of Corrections trained by the Department of  
258 Homeland Security as jail enforcement officers under s. 287(g) of  
259 the federal Immigration and Nationality Act. The Department of  
260 Corrections shall perform all actions reasonably necessary to  
261 meet its obligations under the agreement.

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262       2. The Department of Corrections shall report by November  
263 1, 2011, to the Governor, the President of the Senate, and the  
264 Speaker of the House of Representatives on the status of  
265 implementation of this paragraph. If the department has not  
266 entered into a memorandum of agreement with the Department of  
267 Homeland Security by that date, the department shall identify in  
268 the report any barriers to full implementation of this  
269 paragraph.

270       3. By February 1 of each year, the Department of  
271 Corrections shall report to the Governor, the President of the  
272 Senate, and the Speaker of the House of Representatives on the  
273 enforcement activities conducted under this paragraph,  
274 including, but not limited to, the number of inmates identified  
275 as being unauthorized immigrants, placed in federal custody, or  
276 deported.

277       (b)1. The Department of Law Enforcement may request from  
278 the United States Department of Homeland Security approval to  
279 enter into a memorandum of agreement to have employees of the  
280 Department of Law Enforcement trained by the Department of  
281 Homeland Security as task force officers under s. 287(g) of the  
282 federal Immigration and Nationality Act. The Department of Law  
283 Enforcement shall perform all actions reasonably necessary to  
284 meet its obligations under the agreement.

285       2. By February 1 of each year, the Department of Law  
286 Enforcement shall report to the Governor, the President of the  
287 Senate, and the Speaker of the House of Representatives on the  
288 enforcement activities conducted under this paragraph.

289       (c)1. The sheriff of each county may evaluate the  
290 feasibility of entering into a memorandum of agreement with the

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291 United States Department of Homeland Security to have employees  
292 of the sheriff trained by the Department of Homeland Security as  
293 jail enforcement officers or task force officers under s. 287(g)  
294 of the federal Immigration and Nationality Act. The Department  
295 of Law Enforcement, upon request by a sheriff, shall share  
296 information on the department's agreement with the United States  
297 Department of Homeland Security and experience in operating  
298 under the agreement.

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

300 a. The potential fiscal impact on the office of the  
301 sheriff;

302 b. The potential impact on the workload and personnel needs  
303 of the office; and

304 c. The estimated presence of unauthorized immigrants in the  
305 geographic area served by the sheriff.

306 3. If the sheriff determines that entering into an  
307 agreement is feasible, the sheriff may make an initial request  
308 for an agreement to the Department of Homeland Security. This  
309 paragraph does not compel the sheriff to execute an agreement.

310 (3) IDENTIFICATION UPON CONVICTION.—

311 (a) When a person is confined in a jail, prison, or other  
312 criminal detention facility after a conviction for a dangerous  
313 crime as listed in s. 907.041(4)(a), Florida Statutes, the  
314 agency having custody of that person shall make a reasonable  
315 effort to determine the nationality of the person and whether  
316 the person is present in the United States lawfully, including,  
317 but not limited to, the submission of fingerprints pursuant to  
318 the agreement under paragraph (b). If the holding agency  
319 establishes, independent of the submission of fingerprints, that

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320 the person is not lawfully present in the United States, the  
321 agency shall notify the United States Department of Homeland  
322 Security.

323 (b) The arresting agency shall adopt rules as are  
324 reasonably necessary and appropriate for, and not inconsistent  
325 with, the proper administration and enforcement of the  
326 provisions of this subsection, and may enter into an agreement  
327 with Immigration and Customs Enforcement which is not  
328 inconsistent with this section and is incident to carrying out  
329 its provisions.

330 (c) This subsection may not be construed to deny a person  
331 bond or to prevent release of a person from confinement if the  
332 person is otherwise eligible for release. However, for the  
333 purpose of the bail determination required by s. 903.046,  
334 Florida Statutes, a determination that the person is not  
335 lawfully present in the United States raises a rebuttable  
336 presumption that there is a risk of flight to avoid prosecution.

337 Section 5. Section 945.80, Florida Statutes, is created to  
338 read:

339 945.80 Removal and deportation of criminal aliens.—

340 (1) Notwithstanding any law to the contrary, and pursuant  
341 to s. 241(a)(4)(B)(ii) of the federal Immigration and  
342 Nationality Act, the secretary of the department shall release a  
343 prisoner to the custody and control of the United States  
344 Immigration and Customs Enforcement if:

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

346 (b) The department has received a final order of removal  
347 for the prisoner from the United States Immigration and Customs  
348 Enforcement; and

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

351  
352 A person is ineligible for release under this section if he or  
353 she would be ineligible for control release under s.  
354 947.146(3)(a)-(m).

355       (2)(a) The department shall identify, during the inmate-  
356 reception process and among the existing inmate population,  
357 prisoners who are eligible for removal under this section and  
358 determine whether removal is appropriate and in the best  
359 interest of the state.

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

363       (3) Upon approval for removal of the prisoner under this  
364 section, the department shall establish a release date for the  
365 prisoner to be transferred to federal custody. The department  
366 shall maintain exclusive control of and responsibility for the  
367 custody and transportation of the prisoner until the prisoner is  
368 physically transferred to federal custody.

369       (4)(a) If a prisoner who is released under this section  
370 returns unlawfully to the United States, upon notice from any  
371 state or federal law enforcement agency that the prisoner is  
372 incarcerated, the secretary shall revoke the release of the  
373 prisoner and seek the return of the prisoner to the custody of  
374 the department in order to serve the remainder of the sentence  
375 imposed by the court. The prisoner is not eligible for probation  
376 or community control with respect to any sentence affected by  
377 the release under this section.

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

380 (5) The secretary of the department may enter into an  
381 agreement with the United States Department of Homeland Security  
382 regarding the rapid repatriation of removable custodial aliens  
383 from the United States pursuant to this section.

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

386 (a) The number of prisoners who are transferred to federal  
387 custody;

388 (b) The number of prisoners who reenter the United States;  
389 and

390 (c) The annual cost-avoidance achieved.

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

394 Section 6. (1) The Legislature finds that the costs  
395 incurred by the state related to unauthorized immigration are  
396 exacerbated by the failure of the Federal Government to enforce  
397 immigration laws adequately and to adopt and implement  
398 comprehensive reforms to immigration laws in order to control  
399 and contain unauthorized immigration more effectively.

400 (2) (a) The Agency for Workforce Innovation, in consultation  
401 with the Office of Economic and Demographic Research, shall  
402 prepare a report by December 1, 2011, quantifying the costs to  
403 the state which are attributable to unauthorized immigration.  
404 The agency shall submit the report to the Governor, the  
405 President of the Senate, and the Speaker of the House of  
406 Representatives by that date.

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407       (b) Before January 1, 2012, the director of the Agency for  
408 Workforce Innovation shall, in consultation with the Office of  
409 the Governor, submit to the appropriate federal agency or  
410 official a request, based on the total costs quantified under  
411 paragraph (a), for reimbursement to the state of those costs or  
412 a corresponding reduction in or forgiveness of any debt,  
413 interest payments, or other moneys owed by the state to the  
414 Federal Government as a result of borrowing from the Federal  
415 Government to fund unemployment compensation claims.

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