

By Senator Hays

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1 A bill to be entitled
2 An act relating to the verification of employment
3 eligibility; defining terms; requiring every employer
4 to use the Employment Authorization Program to verify
5 the employment eligibility of each employee on or
6 after a specified date; providing that a business that
7 does not use the E-Verify system to verify the
8 employment eligibility of the employee shall lose its
9 license to do business in this state until the
10 business has registered with the E-Verify system;
11 requiring that each verification be made in accordance
12 with certain provisions of federal law; prohibiting an
13 employer from employing an unauthorized alien;
14 authorizing certain persons to file a complaint with
15 the Department of Business and Professional Regulation
16 or the Agency for Workforce Innovation alleging that
17 an employer has employed an unauthorized alien;
18 prohibiting the filing of a complaint based on race,
19 color, or national origin; providing that a person who
20 knowingly files a false and frivolous complaint
21 commits a misdemeanor of the second degree; providing
22 criminal penalties; requiring the department or the
23 Agency for Workforce Innovation to notify the employer
24 upon receipt of a complaint; requiring the department
25 or the Agency for Workforce Innovation to investigate
26 whether a violation has occurred; authorizing the
27 department and the Agency for Workforce Innovation to
28 issue a subpoena for the production of documents;
29 requiring the department or the Agency for Workforce

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30 Innovation to request that the Federal Government
31 verify the employment eligibility of any employee
32 named in a complaint; prohibiting the department or
33 the Agency for Workforce Innovation from independently
34 making a final determination regarding whether an
35 employee is authorized to be employed in the United
36 States; requiring the department or the Agency for
37 Workforce Innovation to notify certain entities after
38 determining that the employer has employed an
39 unauthorized alien; prohibiting the department or the
40 Agency for Workforce Innovation from acting on a
41 complaint for a violation of law occurring before a
42 specified date; requiring the department or the Agency
43 for Workforce Innovation to order an employer to take
44 certain action upon a first violation of the
45 prohibition against hiring an unauthorized alien;
46 requiring that certain licenses of an employer be
47 suspended if the employer fails to file an affidavit
48 confirming the termination of employment of an
49 unauthorized alien; providing for reinstatement of
50 such licenses under certain circumstances; requiring
51 that the department or the Agency for Workforce
52 Innovation take certain action against an employer for
53 a second violation within a specified period following
54 the prohibition against hiring an unauthorized alien;
55 requiring the Agency for Workforce Innovation to
56 maintain a public database containing certain
57 information and make such information available on its
58 website; authorizing the department or the Agency for

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59 Workforce Innovation to apply to the appropriate
60 circuit court for a judicial order directing an
61 employer to comply with an order issued by the
62 department or the Agency for Workforce Innovation;
63 creating a rebuttable presumption for certain
64 employers that the employer did not knowingly employ
65 an unauthorized alien; authorizing an employer or
66 employee to seek an injunction under certain
67 circumstances; providing that certain actions by an
68 employer constitute an unfair trade practice;
69 providing that an employee aggrieved by such actions
70 has a private cause of action against the employer for
71 a deceptive and unfair trade practice; providing for
72 an award of court costs and attorney's fees; providing
73 that a cause of action does not exist against an
74 employer participating in the E-Verify system on the
75 date of such actions; providing for construction of
76 the act; creating s. 287.135, F.S.; defining terms;
77 requiring every public employer to register with and
78 participate in the E-Verify system for specified
79 purposes; prohibiting a public employer, contractor,
80 or subcontractor from entering into a contract for the
81 physical performance of services in this state unless
82 the contractor or subcontractor registers and
83 participates in the system; requiring that
84 subcontractors certify certain information to
85 contractors by specified means; requiring that a
86 contractor maintain a copy of the certification for a
87 specified period; authorizing a contractor to

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88 terminate a contract with a subcontractor under
89 certain conditions; providing that such termination is
90 not a breach of contract; authorizing a subcontractor
91 to challenge a termination within a specified period;
92 requiring that a public contractor terminate a
93 contract if the contractor or subcontractor is in
94 violation of the act; providing that such termination
95 is not a breach of contract; authorizing a contractor
96 or subcontractor to challenge such a termination
97 within a specified period; providing guidelines for
98 interpretation of the provisions of the act; providing
99 for severability; providing an effective date.

100
101 Be It Enacted by the Legislature of the State of Florida:

102
103 Section 1. Use of E-Verify system required for private
104 employers; business licensing enforcement; private right of
105 action for displaced worker.-

106 (1) DEFINITIONS.-As used in this section, the term:

107 (a) "Agency" means an agency, department, board, or
108 commission of this state or a county, municipality, or town
109 issuing a license for the purpose of operating a business in
110 this state.

111 (b) "Department" means the Department of Business and
112 Professional Regulation.

113 (c) "E-Verify system" means the Employment Authorization
114 Program, formerly the "Basic Pilot Program," under Pub. L. No.
115 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
116 30, 1996), as amended, or any successor program designated by

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117 the Federal Government for verification that an employee is an
118 employment-authorized alien.

119 (d) "Employee" means any person who performs employment
120 services in this state for an employer pursuant to an employment
121 relationship between the person and employer. An employee does
122 not include an independent contractor.

123 (e) "Employer" means any individual or type of organization
124 transacting business in this state which holds or has applied
125 for a license issued by an agency and employs individuals who
126 perform employment services. The term does not include an entity
127 that hires an independent contractor to perform work or the
128 occupant or owner of a private residence who hires casual
129 domestic labor to perform work customarily performed by a
130 homeowner entirely within a private residence.

131 (f) "License" means a license, permit, certificate,
132 approval, registration, charter, or similar form of
133 authorization required by law and issued by an agency for the
134 purpose of operating a business. A license includes, but is not
135 limited to:

136 1. Articles of incorporation.

137 2. A certificate of partnership, a partnership
138 registration, or articles of organization.

139 3. A grant of authority issued pursuant to state or federal
140 law.

141 4. A transaction privilege tax license.

142 (g) "Unauthorized alien" means an alien is not authorized
143 under federal law to be employed in the United States, as
144 described in 8 U.S.C. 1324a(h) (3). This term shall be
145 interpreted consistently with that section and any applicable

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146 federal rules or regulations.

147 (h) "Knowingly employ an unauthorized alien" has the same
148 meaning as prescribed in 8 U.S.C. 1324a. The term shall be
149 interpreted consistently with s. 1324a and any federal rule or
150 regulation applicable to the unlawful employment of aliens.

151 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF
152 BUSINESS LICENSE.—

153 (a) Beginning January 1, 2012, every employer shall, after
154 making an offer of employment which has been accepted by an
155 employee, use the E-Verify system to verify the employment
156 eligibility of the employee. Verification must occur within the
157 period stipulated by federal law or regulations after the hiring
158 of the employee. However, an employer is not required to verify
159 the employment eligibility of a continuing employee hired before
160 the date of the employer's registration with the system.

161 (b) A business that has not complied with paragraph (a)
162 shall lose its license to do business in this state until the
163 business has registered with the E-Verify system and provided
164 the department with an affidavit stating that the business has
165 registered with the E-Verify system.

166 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE
167 AND FRIVOLOUS COMPLAINTS; VIOLATION; CLASSIFICATION; SUSPENSION
168 AND REVOCATION OF LICENSE.—

169 (a) An employer may not employ an unauthorized alien.

170 (b) A person who has actual or constructive knowledge that
171 an employer employs, or has within the last 90 days employed, an
172 unauthorized alien may file a complaint with the department or
173 the Agency for Workforce Innovation.

174 (c) A complaint may not be based on race, color, or

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175 national origin, except to the extent permitted by the United
176 States Constitution or the State Constitution.

177 (d) A person who knowingly files a false and frivolous
178 complaint under this subsection commits a misdemeanor of the
179 second degree, punishable as provided in s. 775.082 or s.
180 775.083.

181 (e) Upon the receipt of a valid complaint of a violation of
182 paragraph (a), the department or the Agency for Workforce
183 Innovation shall notify the employer of the complaint and direct
184 the employer to notify any affected employees named in the
185 complaint.

186 (f) The department or the Agency for Workforce Innovation
187 shall investigate whether a violation has occurred and hold an
188 administrative hearing at which the employer may present any
189 evidence he or she desires and at which the employer has the
190 right to counsel. The department or the Agency for Workforce
191 Innovation shall request that the Federal Government verify,
192 pursuant to 8 U.S.C. 1373(c), the employment status of any
193 employee named in the complaint. The department or Agency for
194 Workforce Innovation may not independently make a final
195 determination as to whether a particular employee is an
196 unauthorized alien. The department or agency shall rely upon
197 verification of employment authorization provided by the Federal
198 Government.

199 (g) The department or agency may issue a subpoena to
200 produce employment records that relate to the recruitment,
201 hiring, employment, or termination policies, practices, or acts
202 of employment relating to the investigation of a valid
203 complaint.

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204 (h) If the department or Agency for Workforce Innovation
205 confirms that the employer has employed an unauthorized alien,
206 the department or agency shall notify:

207 1. The United States Immigration and Customs Enforcement
208 Agency of the identity of the unauthorized alien and, if known,
209 the alien's address or location in the state; and

210 2. The local law enforcement agency of the presence of the
211 unauthorized alien in the jurisdiction.

212 (i) The department or Agency for Workforce Innovation may
213 not act upon a complaint against any employer for any violation
214 occurring before January 1, 2012.

215 (j)1. Upon finding that an employer has violated paragraph
216 (a), the department or Agency for Workforce Innovation shall
217 order the employer to:

218 a. Terminate the employment of all unauthorized aliens; and

219 b. File a sworn affidavit with the department within 10
220 days after the receipt of the order. The affidavit must state
221 that the employer has corrected the violation by:

222 (I) Terminating the unauthorized alien's employment;

223 (II) Requesting that a second or additional verification of
224 the alien's employment status be authorized, by using the E-
225 Verify system; or

226 (III) Attempting to terminate the unauthorized alien's
227 employment, and such termination has been challenged in a court
228 of competent jurisdiction.

229 2. If the employer fails to file the required affidavit,
230 the department or Agency for Workforce Innovation shall order
231 the appropriate agencies to suspend all applicable licenses held
232 by the employer. All such licenses suspended shall remain

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233 suspended until the affidavit is filed.

234
235 Notwithstanding any other law, the suspended licenses shall be
236 deemed to have been reinstated upon the filing of the affidavit.
237 During the pendency of an action, the 10-day period shall be
238 tolled. The 10-day period shall also be tolled during any period
239 during which the Federal Government allows an alien to challenge
240 the Federal Government's determination of his or her immigration
241 status or employment authorization.

242 3. Licenses subject to suspension under this subsection
243 include all licenses that are held by the employer and that are
244 necessary to operate the employer's business at the location at
245 which the unauthorized alien performed work. If a license is not
246 necessary to operate the employer's business at the specific
247 location at which the unauthorized alien performed work, but a
248 license is necessary to operate the employer's business in
249 general, the licenses subject to suspension under subparagraph
250 2. include all licenses held by the employer at the employer's
251 primary place of business.

252 4. The department shall adopt rules pursuant to ss.
253 120.536(1) and 120.54, Florida Statutes, by July 1, 2011, to
254 establish procedures for an agency to exempt certain licenses
255 issued by the agency which the agency determines, with the
256 concurrence of the department, are unrelated to operating a
257 business in this state.

258 (k) Upon finding a second or subsequent violation of
259 paragraph (a) during a 2-year period, the department or the
260 Agency for Workforce Innovation shall order the appropriate
261 agencies to suspend, for at least 30 days, all licenses that are

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262 held by the employer and that are necessary to operate the
263 employer's business at the location at which the unauthorized
264 alien performed work. If a license is not necessary to operate
265 the employer's business at the specific location at which the
266 unauthorized alien performed work, but a license is necessary to
267 operate the employer's business in general, the department or
268 the Agency for Workforce Innovation shall order the appropriate
269 agencies to suspend all licenses held by the employer at the
270 employer's primary place of business. On receipt of the order
271 and notwithstanding any other law, the appropriate agencies
272 shall immediately suspend such licenses for at least 30 days.

273 (l) The Agency for Workforce Innovation shall maintain a
274 public database containing copies of all orders issued pursuant
275 to this section and make such information available on its
276 website.

277 (m) If the department or the Agency for Workforce
278 Innovation determines that an agency or employer has failed to
279 comply with an order under this section, the department or the
280 Agency for Workforce Innovation may apply to the circuit court
281 for a judicial order directing the agency or employer to comply
282 with the order of the department or Agency for Workforce
283 Innovation.

284 (n) For the purposes of this section, compliance with
285 subsection (2) creates a rebuttable presumption that an employer
286 did not knowingly employ an unauthorized alien in violation of
287 paragraph (a).

288 (4) INJUNCTION.—At any time after a complaint is received,
289 an employer subject to a complaint under this section, or any
290 employee of the employer who is alleged to be an unauthorized

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291 alien, may challenge and seek to enjoin the enforcement of this
292 section before a court of competent jurisdiction.

293 (5) DECEPTIVE AND UNFAIR TRADE PRACTICE.—

294 (a) An employer commits a deceptive and unfair trade
295 practice in violation of part II of chapter 501, Florida
296 Statutes, if he or she discharges a United States citizen or
297 legal permanent resident alien employee who has applied for
298 naturalization, if, on the date of discharge, an unauthorized
299 alien worker was employed by the employer at the same job site
300 or in the same job classification elsewhere in the state.

301 (b) The discharged employee has a cause of action against
302 the employer for civil penalties and attorney's fees for the
303 deceptive and unfair trade practice.

304 (c) The wrongfully discharged employee is entitled to
305 reinstatement, back pay, court costs, and attorney's fees.
306 Criminal or civil sanctions, including fines, shall not be
307 imposed against an employer for a violation of this subsection.

308 (d) A cause of action under this subsection does not exist
309 against an employer who, on the date of discharge, was enrolled
310 and participating in the E-Verify system.

311 (6) CONSTRUCTION.—This section shall be enforced without
312 regard to race or national origin and shall be construed in a
313 manner so as to be fully consistent with any applicable
314 provisions of federal law.

315 Section 2. Section 287.135, Florida Statutes, is created to
316 read:

317 287.135 Verification of immigration status; public
318 employers.—

319 (1) As used in the section, the term:

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320 (a) "Contractor" means a person who has entered or is
321 attempting to enter into a public contract for services with a
322 state agency or political subdivision.

323 (b) "E-Verify system" means the system for electronic
324 verification of the work-authorization program of the Illegal
325 Immigration Reform and Immigration Responsibility Act of 1996,
326 Pub. L. No. 104-208, Division C, Title IV, s. 403(a), as
327 amended, and operated by the United States Department of
328 Homeland Security, or a successor work-authorization program
329 designated by the department or other federal agency authorized
330 to verify the work-authorization status of newly hired employees
331 pursuant to the Immigration Reform and Control Act of 1986, Pub.
332 L. No. 99-603.

333 (c) "Public employer" means any department, agency, or
334 political subdivision of the state.

335 (d) "Subcontractor" means any supplier, distributor,
336 vendor, or firm furnishing supplies or services to or for a
337 contractor or another subcontractor.

338 (2) (a) Every public employer shall register with and
339 participate in the E-Verify system for the purpose of verifying
340 the work authorization status of all new employees.

341 (b) 1. A public employer may not enter into a contract for
342 the physical performance of services unless the contractor
343 registers and participates in the E-Verify system.

344 2. A contractor or subcontractor may not enter into a
345 contract or subcontract with a public employer in connection
346 with the physical performance of services unless the contractor
347 or subcontractor registers with and uses the E-Verify system for
348 the purpose of verifying information of all new employees

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349 employed within the state.

350 (3) (a) If a contractor uses a subcontractor, the
351 subcontractor shall certify to the contractor in a manner that
352 does not violate federal law that the subcontractor, at the time
353 of certification, does not employ or contract with an
354 unauthorized alien.

355 (b) A contractor shall maintain a copy of the certification
356 of a subcontractor throughout the duration of the term of a
357 contract with the subcontractor.

358 (4) (a) If a contractor knows that a subcontractor is in
359 violation of this section, the contractor shall terminate a
360 contract with the subcontractor for the violation.

361 (b) A contract terminated pursuant to paragraph (a) is not
362 a breach of contract and may not be considered as such by the
363 contractor or the subcontractor.

364 (c) A subcontractor may file an action with a circuit or
365 county court having jurisdiction in the county to challenge a
366 termination of a contract under paragraph (a) no later than 20
367 days after the date on which the contractor terminates the
368 contract with the subcontractor.

369 (5) (a) If a public employer knows that a contractor is
370 knowingly in violation of this section, the public employer
371 shall immediately terminate the contract with the contractor and
372 the contractor is not eligible for public contracts for 1 year
373 after the date of termination. If the public employer has
374 knowledge that a subcontractor has violated this section, and
375 the contractor has otherwise complied with this section, the
376 public employer shall promptly notify the contractor and order
377 the contractor to terminate the contract with the noncompliant

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378 subcontractor.

379 (b) A contract terminated pursuant to paragraph (a) is not
380 a breach of contract and may not be considered as such by the
381 contractor or subcontractor.

382 (c) A contractor or subcontractor may file an action with a
383 circuit or county court having jurisdiction in the county to
384 challenge a termination of a contract under paragraph (a) no
385 later than 20 days after the date on which the contract or
386 subcontract was terminated.

387 (6) The provisions of this section shall be construed in a
388 manner so as to be fully consistent with any applicable federal
389 law.

390 Section 3. If any provision of this act or its application
391 to any person or circumstance is held invalid, the invalidity
392 does not affect the remaining provisions or applications of the
393 act which can be given effect without the invalid provision or
394 application, and to this end the provisions of this act are
395 severable.

396 Section 4. This act shall take effect July 1, 2011.