

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

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

85 | specified period; requiring that a public contractor
 86 | terminate a contract if the contractor or subcontractor is
 87 | in violation of the act; providing that such termination
 88 | is not a breach of contract; authorizing a contractor or
 89 | subcontractor to challenge such a termination within a
 90 | specified period; providing guidelines for interpretation
 91 | of the provisions of the act; providing for severability;
 92 | providing an effective date.

93 |

94 | Be It Enacted by the Legislature of the State of Florida:

95 |

96 | Section 1. Use of E-verify system required for private
 97 | employers; business licensing enforcement; private right of
 98 | action for displaced worker.—

99 | (1) DEFINITIONS.—As used in this section, the term:

100 | (a) "Agency" means an agency, department, board, or
 101 | commission of this state or a county, municipality, or town
 102 | issuing a license for the purpose of operating a business in
 103 | this state.

104 | (b) "Department" means the Department of Business and
 105 | Professional Regulation.

106 | (c) "E-Verify system" means the Employment Authorization
 107 | Program, formerly the "Basic Pilot Program," under Pub. L. No.
 108 | 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 109 | 30, 1996), as amended, or any successor program designated by
 110 | the Federal Government for verification that an employee is an
 111 | employment-authorized alien.

112 | (d) "Employee" means any person who performs employment

113 services in this state for an employer pursuant to an employment
 114 relationship between the person and employer. An employee does
 115 not include an independent contractor.

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

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

- 129 1. Articles of incorporation.
- 130 2. A certificate of partnership, a partnership
 131 registration, or articles of organization.
- 132 3. A grant of authority issued pursuant to state or
 133 federal law.
- 134 4. A transaction privilege tax license.

135 (g) "Unauthorized alien" means an alien is not authorized
 136 under federal law to be employed in the United States, as
 137 described in 8 U.S.C. 1324a(h) (3). This term shall be
 138 interpreted consistently with that section and any applicable
 139 federal rules or regulations.

140 (h) "Knowingly employ an unauthorized alien" has the same

141 meaning as prescribed in 8 U.S.C. 1324a. The term shall be
 142 interpreted consistently with s. 1324a and any federal rule or
 143 regulation applicable to the unlawful employment of aliens.

144 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF
 145 BUSINESS LICENSE.—

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

154 (b) A business that has not complied with paragraph (a)
 155 shall lose its license to do business in this state until the
 156 business has registered with the E-verify system and provided
 157 the department with an affidavit stating that the business has
 158 registered with the E-verify system.

159 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE
 160 AND FRIVOLOUS COMPLAINTS; VIOLATION; CLASSIFICATION; SUSPENSION
 161 AND REVOCATION OF LICENSE.—

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

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

167 (c) A complaint may not be based on race, color, or
 168 national origin, except to the extent permitted by the United

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169 States Constitution or the State Constitution.

170 (d) A person who knowingly files a false and frivolous
171 complaint under this subsection commits a misdemeanor of the
172 second degree, punishable as provided in s. 775.082 or s.
173 775.083.

174 (e) Upon the receipt of a valid complaint of a violation
175 of paragraph (a), the department or the Agency for Workforce
176 Innovation shall notify the employer of the complaint and direct
177 the employer to notify any affected employees named in the
178 complaint.

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

192 (g) The department or agency may issue a subpoena to
193 produce employment records that relate to the recruitment,
194 hiring, employment, or termination policies, practices, or acts
195 of employment relating to the investigation of a valid
196 complaint.

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

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

203 2. The local law enforcement agency of the presence of the
 204 unauthorized alien in the jurisdiction.

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

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

211 a. Terminate the employment of all unauthorized aliens;
 212 and

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

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

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

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

223 2. If the employer fails to file the required affidavit,
 224 the department or Agency for Workforce Innovation shall order

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225 the appropriate agencies to suspend all applicable licenses held
226 by the employer. All such licenses suspended shall remain
227 suspended until the affidavit is filed.

228
229 Notwithstanding any other law, the suspended licenses shall be
230 deemed to have been reinstated upon the filing of the affidavit.
231 During the pendency of an action, the 10-day period shall be
232 tolled. The 10-day period shall also be tolled during any period
233 during which the Federal Government allows an alien to challenge
234 the Federal Government's determination of his or her immigration
235 status or employment authorization.

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

246 4. The department shall adopt rules pursuant to ss.
247 120.536(1) and 120.54, Florida Statutes, by July 1, 2011, to
248 establish procedures for an agency to exempt certain licenses
249 issued by the agency which the agency determines, with the
250 concurrence of the department, are unrelated to operating a
251 business in this state.

252 (k) Upon finding a second or subsequent violation of

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253 paragraph (a) during a 2-year period, the department or the
254 Agency for Workforce Innovation shall order the appropriate
255 agencies to suspend, for at least 30 days, all licenses that are
256 held by the employer and that are necessary to operate the
257 employer's business at the location at which the unauthorized
258 alien performed work. If a license is not necessary to operate
259 the employer's business at the specific location at which the
260 unauthorized alien performed work, but a license is necessary to
261 operate the employer's business in general, the department or
262 the Agency for Workforce Innovation shall order the appropriate
263 agencies to suspend all licenses held by the employer at the
264 employer's primary place of business. On receipt of the order
265 and notwithstanding any other law, the appropriate agencies
266 shall immediately suspend such licenses for at least 30 days.

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

271 (m) If the department or the Agency for Workforce
272 Innovation determines that an agency or employer has failed to
273 comply with an order under this section, the department or the
274 Agency for Workforce Innovation may apply to the circuit court
275 for a judicial order directing the agency or employer to comply
276 with the order of the department or Agency for Workforce
277 Innovation.

278 (n) For the purposes of this section, compliance with
279 subsection (2) creates a rebuttable presumption that an employer
280 did not knowingly employ an unauthorized alien in violation of

281 paragraph (a).

282 (4) INJUNCTION.—At any time after a complaint is received,
 283 an employer subject to a complaint under this section, or any
 284 employee of the employer who is alleged to be an unauthorized
 285 alien, may challenge and seek to enjoin the enforcement of this
 286 section before a court of competent jurisdiction.

287 (5) DECEPTIVE AND UNFAIR TRADE PRACTICE.—

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

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

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

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

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

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309 Section 2. Section 287.135, Florida Statutes, is created
310 to read:

311 287.135 Verification of immigration status; public
312 employers.—

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

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

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

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

329 (d) "Subcontractor" means any supplier, distributor,
330 vendor, or firm furnishing supplies or services to or for a
331 contractor or another subcontractor.

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

335 (b)1. A public employer may not enter into a contract for
336 the physical performance of services unless the contractor

337 registers and participates in the E-Verify system.

338 2. A contractor or subcontractor may not enter into a
339 contract or subcontract with a public employer in connection
340 with the physical performance of services unless the contractor
341 or subcontractor registers with and uses the E-Verify system for
342 the purpose of verifying information of all new employees
343 employed within the state.

344 (3) (a) If a contractor uses a subcontractor, the
345 subcontractor shall certify to the contractor in a manner that
346 does not violate federal law that the subcontractor, at the time
347 of certification, does not employ or contract with an
348 unauthorized alien.

349 (b) A contractor shall maintain a copy of the
350 certification of a subcontractor throughout the duration of the
351 term of a contract with the subcontractor.

352 (4) (a) If a contractor knows that a subcontractor is in
353 violation of this section, the contractor shall terminate a
354 contract with the subcontractor for the violation.

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

358 (c) A subcontractor may file an action with a circuit or
359 county court having jurisdiction in the county to challenge a
360 termination of a contract under paragraph (a) no later than 20
361 days after the date on which the contractor terminates the
362 contract with the subcontractor.

363 (5) (a) If a public employer knows that a contractor is
364 knowingly in violation of this section, the public employer

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365 shall immediately terminate the contract with the contractor and
366 the contractor is not eligible for public contracts for 1 year
367 after the date of termination. If the public employer has
368 knowledge that a subcontractor has violated this section, and
369 the contractor has otherwise complied with this section, the
370 public employer shall promptly notify the contractor and order
371 the contractor to terminate the contract with the noncompliant
372 subcontractor.

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

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

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

384 Section 3. If any provision of this act or its application
385 to any person or circumstance is held invalid, the invalidity
386 does not affect the remaining provisions or applications of the
387 act which can be given effect without the invalid provision or
388 application, and to this end the provisions of this act are
389 severable.

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