

HB 7089

2011

1 A bill to be entitled
2 An act relating to the enforcement of immigration laws;
3 providing a short title; providing a directive to the
4 Division of Statutory Revision; creating s. 820.01, F.S.;
5 providing legislative intent; creating s. 820.02, F.S.;
6 prohibiting the state or its political subdivisions from
7 limiting or restricting the enforcement of federal
8 immigration laws; providing that the state or its
9 political subdivisions may not be prohibited from
10 maintaining or exchanging information regarding
11 immigration status for certain purposes; providing for
12 enforcement and penalties; authorizing a law enforcement
13 officer to determine immigration status under certain
14 circumstances; providing that an alien who is in this
15 state and is unlawfully present in the United States
16 commits a misdemeanor of the second degree; providing
17 penalties; requiring implementation consistent with
18 federal law; prohibiting law enforcement officers from
19 using race, color, or national origin in the enforcement;
20 creating s. 820.03, F.S.; providing definitions; requiring
21 every employer to use the federal E-Verify system to
22 verify the employment eligibility of each employee on or
23 after a specified date; prohibiting an employer from
24 knowingly employing an unauthorized alien; requiring that
25 each verification be made in accordance with certain
26 provisions of federal law; authorizing certain persons to
27 file a complaint with the licensing agency alleging that
28 an employer has employed an unauthorized alien; providing

Page 1 of 21

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

hb7089-00

29 | for enforcement and penalties; creating a rebuttable
30 | presumption for certain employers that the employer did
31 | not knowingly employ an unauthorized alien; authorizing an
32 | employer or employee to seek an injunction under certain
33 | circumstances; authorizing certain persons to file a
34 | complaint with the state attorney or Attorney General
35 | alleging that an employer has employed an unauthorized
36 | alien; authorizing enforcement by the state attorney and
37 | Attorney General; providing penalties; prohibiting the
38 | filing of a complaint based on race, color, or national
39 | origin; providing that a person who knowingly files a
40 | false and frivolous complaint commits a misdemeanor of the
41 | second degree; providing for construction; transferring
42 | and renumbering s. 448.09, F.S., relating to a prohibition
43 | on employment of unauthorized aliens; creating s. 287.135,
44 | F.S.; providing definitions; requiring public employers to
45 | use the federal E-Verify system to verify the employment
46 | eligibility of each employee; prohibiting a public
47 | employer from knowingly employing an unauthorized alien;
48 | creating a rebuttable presumption for certain public
49 | employers that the public employer did not knowingly
50 | employ an unauthorized alien; prohibiting public employers
51 | from entering into a contract for contractual services
52 | with contractors that are not registered and participating
53 | in the federal E-Verify system; prohibiting certain
54 | contractors and subcontractors from knowingly employing an
55 | unauthorized alien; providing procedures and requirements;
56 | creating a rebuttable presumption that certain contractors

HB 7089

2011

57 and subcontractors did not knowingly employ an
58 unauthorized alien; providing for enforcement without
59 regard to race, color, or national origin; creating s.
60 337.163, F.S.; providing definitions; prohibiting the
61 Department of Transportation from entering into certain
62 contracts with contractors that are not registered and
63 participating in the federal E-Verify system; prohibiting
64 certain contractors and subcontractors from knowingly
65 employing an unauthorized alien; providing procedures and
66 requirements; creating a rebuttable presumption that
67 certain contractors and subcontractors did not knowingly
68 employ an unauthorized alien; providing for enforcement
69 without regard to race, color, or national origin;
70 amending s. 901.15, F.S.; providing an additional instance
71 whereby an arrest may be made by a law enforcement officer
72 without a warrant; amending s. 903.046, F.S.; providing
73 additional criteria for the court to consider when
74 determining whether to release a defendant on bail or
75 other conditions; creating s. 921.245, F.S.; providing for
76 enhanced maximum criminal penalties when an offense is
77 committed by an alien unlawfully present in the United
78 States; providing effective dates.

79
80 Be It Enacted by the Legislature of the State of Florida:

81
82 Section 1. Short title.—This act may be cited as the
83 "Florida Immigration Enforcement Act."

84 Section 2. The Division of Statutory Revision is directed
 85 to create chapter 820, Florida Statutes, to be entitled
 86 "IMMIGRATION ENFORCEMENT."

87 Section 3. Section 820.01, Florida Statutes, is created to
 88 read:

89 820.01 Intent.—The Legislature finds that there is a
 90 compelling interest in the cooperative enforcement of federal
 91 immigration laws throughout the state. The Legislature declares
 92 that the intent of this chapter is to discourage and deter the
 93 unlawful entry and presence of aliens in this state. The
 94 provisions of this chapter are intended to work together to
 95 accomplish this purpose.

96 Section 4. Section 820.02, Florida Statutes, is created to
 97 read:

98 820.02 Cooperation and assistance in enforcement of
 99 immigration laws.—

100 (1) (a) An official or agency of this state or a county,
 101 municipality, or other political subdivision of this state may
 102 not limit or restrict the enforcement of federal immigration
 103 laws to less than the full extent permitted by federal law.

104 (b) Except as provided in federal law, officials or
 105 agencies of this state and counties, municipalities, and other
 106 political subdivisions of this state may not be prohibited or in
 107 any way be restricted from sending, receiving, or maintaining
 108 information relating to the immigration status, lawful or
 109 unlawful, of any individual or exchanging that information with
 110 any other federal, state, or local governmental entity for the
 111 following official purposes:

HB 7089

2011

112 1. Determining eligibility for any public benefit,
113 service, or license provided by the Federal Government, the
114 state, or any county, municipality, or other political
115 subdivision of this state.

116 2. Verifying any claim of residence or domicile if
117 determination of residence or domicile is required under federal
118 law, the laws of this state, or a judicial order issued pursuant
119 to a civil or criminal proceeding in this state.

120 3. If the person is an alien, determining whether the
121 person is in compliance with the federal registration laws
122 prescribed by Title II, Chapter 7 of the federal Immigration and
123 Nationality Act.

124 4. Complying with 8 U.S.C. ss. 1373 and 1644.

125 (c)1. The Attorney General may enforce this subsection if
126 there is reasonable cause to believe that this subsection has
127 been violated and may commence a civil or administrative action
128 and, in addition to the penalty provided in this subparagraph,
129 may seek such other relief as may be appropriate. If there is a
130 judicial finding that an entity has violated this subsection,
131 the court shall order that the entity pay a civil penalty of not
132 less than \$500 and not more than \$5,000 for each day that the
133 policy remains in effect after the filing of an action under
134 this subsection.

135 2. The court shall collect the civil penalty prescribed in
136 subparagraph 1. and deposit the moneys in the Violent Crime
137 Investigative Emergency and Drug Control Strategy Implementation
138 Account within the Department of Law Enforcement Operating Trust
139 Fund pursuant to s. 943.042.

HB 7089

2011

140 (2) (a) 1. A reasonable attempt may be made to determine the
141 immigration status of a person who is the subject of a criminal
142 investigation by a law enforcement official or a law enforcement
143 agency of this state or of a county, municipality, or other
144 political subdivision of this state, if reasonable suspicion
145 exists that the person is an alien and is unlawfully present in
146 the United States.

147 2. A reasonable attempt shall be made to determine the
148 immigration status of a person who is arrested by a law
149 enforcement official or a law enforcement agency of this state
150 or of a county, municipality, or other political subdivision of
151 this state before the person is released, if reasonable
152 suspicion exists that the person is an alien and is unlawfully
153 present in the United States.

154 (b) Immigration status shall be verified under this
155 subsection with the Federal Government pursuant to 8 U.S.C. s.
156 1373(c). If the person's status is reported by the Federal
157 Government as unlawfully present in the United States, the law
158 enforcement official or law enforcement agency must, as soon as
159 practicable, report that person to the United States Immigration
160 and Customs Enforcement or the United States Customs and Border
161 Protection.

162 (3) An alien who is in this state and is unlawfully
163 present in the United States commits a misdemeanor of the second
164 degree, punishable as provided in s. 775.082 and by a fine not
165 to exceed \$100. For a first violation of this subsection, the
166 court may not sentence the person to more than 20 days in jail.

HB 7089

2011

167 For a second or subsequent violation, the court may not sentence
168 the person to more than 30 days in jail.

169 (4) A state or local correctional facility shall
170 immediately notify the United States Immigration and Customs
171 Enforcement or the United States Customs and Border Protection
172 prior to the discharge from imprisonment of an alien unlawfully
173 present in the United States.

174 (5) In the implementation of this section, an alien's
175 immigration status may be determined by:

176 (a) A law enforcement officer who is authorized by the
177 Federal Government to verify or ascertain an alien's immigration
178 status.

179 (b) The United States Immigration and Customs Enforcement
180 or the United States Customs and Border Protection pursuant to 8
181 U.S.C. s. 1373(c).

182 (6) This section shall be implemented in a manner
183 consistent with federal laws regulating immigration, protecting
184 the civil rights of all persons, and respecting the privileges
185 and immunities of United States citizens. A law enforcement
186 official or agency of this state or a county, municipality, or
187 other political subdivision of this state may not consider race,
188 color, or national origin in the enforcement of this section
189 except to the extent permitted by the United States Constitution
190 or the State Constitution.

191 Section 5. Effective July 1, 2012, section 820.03, Florida
192 Statutes, is created to read:

193 820.03 Use of E-Verify system required for private
194 employers; licensing enforcement.—

195 (1) DEFINITIONS.—As used in this section, the term:
 196 (a) "Agency" means an agency, department, board, or
 197 commission of this state or a county, municipality, or political
 198 subdivision issuing a license for the purpose of operating a
 199 business in this state.
 200 (b) "E-Verify system" means the Employment Authorization
 201 Program, formerly the "Basic Pilot Program," under Pub. L. No.
 202 104-208, Division C, Title IV, Subtitle A, s. 403, 110 Stat.
 203 3009-655 (Sept. 30, 1996), as amended, or any successor program
 204 designated by the Federal Government for verification that an
 205 employee is an employment-authorized alien.
 206 (c) "Employee" means any person who performs employment
 207 services in this state for an employer pursuant to an employment
 208 relationship between the person and employer. An employee does
 209 not include an independent contractor.
 210 (d) "Employer" means any person or entity transacting
 211 business in this state that employs individuals. The term does
 212 not include:
 213 1. A government employer;
 214 2. The occupant or owner of a private residence who hires
 215 casual domestic labor to perform work customarily performed by a
 216 homeowner entirely within a private residence; or
 217 3. That portion of labor and services provided to a person
 218 or entity by a licensed independent contractor.
 219 (e) "Knowingly employ an unauthorized alien" has the same
 220 meaning as prescribed in 8 U.S.C. s. 1324a. The term shall be
 221 interpreted consistently with 8 U.S.C. s. 1324a and any federal
 222 rule or regulation applicable to the unlawful employment of

223 aliens.

224 (f) "License" means a license, permit, certificate,

225 approval, registration, charter, or similar form of

226 authorization required by law and issued by an agency for the

227 purpose of operating a business. A license includes, but is not

228 limited to:

229 1. Articles of incorporation.

230 2. A certificate of partnership, a partnership

231 registration, or articles of organization.

232 3. A grant of authority issued pursuant to state or

233 federal law.

234 4. A transaction privilege tax license.

235 (g) "Unauthorized alien" means an alien who is not

236 authorized under federal law to be employed in the United

237 States, as provided in 8 U.S.C. s. 1324a(h) (3). This term shall

238 be interpreted consistently with that section and any applicable

239 federal rules or regulations.

240 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF

241 LICENSE.—Paragraphs (a) and (b) apply with respect to employers

242 employing 100 or more employees on or after July 1, 2012, and

243 with respect to all employers on and after July 1, 2013.

244 (a) Every employer shall use the E-Verify system to verify

245 the employment eligibility of all newly hired employees within

246 the period stipulated by federal law or regulations after the

247 hiring of the employee. However, an employer is not required to

248 verify the employment eligibility of a continuing employee hired

249 before the date of the applicability of the verification

250 requirements of this section on the employer.

HB 7089

2011

251 (b) A business that has not complied with paragraph (a)
252 shall lose its license to do business in this state until the
253 business has registered with the E-Verify system and provided
254 the agency with a sworn affidavit stating that the business has
255 registered with the E-Verify system.

256 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; SUSPENSION OF
257 LICENSE.—

258 (a) An employer may not knowingly employ an unauthorized
259 alien.

260 (b) A person who has actual or constructive knowledge that
261 an employer employs, or has within the last 90 days employed, an
262 unauthorized alien may file a complaint with the agency.

263 (c) Upon the receipt of a valid complaint of a violation
264 of paragraph (a), the agency shall notify the employer of the
265 complaint and direct the employer to notify any affected
266 employees named in the complaint.

267 (d) The agency shall request that the Federal Government
268 verify, pursuant to 8 U.S.C. s. 1373(c), the employment status
269 of any employee named in the complaint.

270 (e) If the agency has reasonable cause to believe that the
271 employer has employed an unauthorized alien, the agency shall
272 notify the local law enforcement agency of the presence of the
273 unauthorized alien in the jurisdiction.

274 (f)1. Upon finding that an employer has violated paragraph
275 (a), the agency shall order the employer to:

276 a. Terminate the employment of all unauthorized aliens;

277 and

278 b. File a sworn affidavit with the agency within 10 days

279 after the receipt of the order. The affidavit must state that
 280 the employer has corrected the violation by:

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

282 (II) Requesting that a second or additional verification
 283 of the alien's employment status be authorized by using the E-
 284 Verify system; or

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

288 2. If the employer fails to file the required affidavit,
 289 the agency shall suspend all applicable licenses held by the
 290 employer. All such licenses suspended shall remain suspended
 291 until the sworn affidavit is filed. Notwithstanding any other
 292 law, the suspended licenses shall be deemed to have been
 293 reinstated upon the filing of the affidavit. During the pendency
 294 of an action, the 10-day period shall be tolled. The 10-day
 295 period shall also be tolled for any period during which the
 296 Federal Government allows an alien to challenge the Federal
 297 Government's determination of his or her immigration status or
 298 employment authorization.

299 3. Licenses subject to suspension under this subsection
 300 include all licenses that are held by the employer and that are
 301 necessary to operate the employer's business at the location at
 302 which the unauthorized alien performed work. If a license is not
 303 necessary to operate the employer's business at the specific
 304 location at which the unauthorized alien performed work, but a
 305 license is necessary to operate the employer's business in
 306 general, the licenses subject to suspension under subparagraph

HB 7089

2011

307 2. include all licenses held by the employer at the employer's
308 primary place of business.

309 (g) Upon finding a second or subsequent violation of
310 paragraph (a) during a 2-year period, the agency shall suspend,
311 for at least 30 days, all licenses that are held by the employer
312 and that are necessary to operate the employer's business at the
313 location at which the unauthorized alien performed work. If a
314 license is not necessary to operate the employer's business at
315 the specific location at which the unauthorized alien performed
316 work, but a license is necessary to operate the employer's
317 business in general, the agency shall suspend all licenses held
318 by the employer at the employer's primary place of business for
319 30 days or upon compliance with paragraph (f), whichever occurs
320 later.

321 (h) For the purposes of this section, compliance with
322 subsection (2) creates a rebuttable presumption that an employer
323 did not knowingly employ an unauthorized alien in violation of
324 paragraph (a). An employer that establishes that it has complied
325 in good faith with the requirements of 8 U.S.C. s. 1324a(b)
326 establishes an affirmative defense that the employer did not
327 knowingly employ an unauthorized alien. An employer is
328 considered to have complied with the requirements of 8 U.S.C. s.
329 1324a(b), notwithstanding an isolated, sporadic, or accidental
330 technical or procedural failure to meet the requirements, if
331 there is a good faith attempt to comply with the requirements.

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

HB 7089

2011

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

337 (5) ENFORCEMENT.—

338 (a) A person who has actual or constructive knowledge that
339 an employer employs, or has within the last 90 days employed, an
340 unauthorized alien may file a complaint with the state attorney
341 or Attorney General. The state attorney and Attorney General may
342 enforce this section if there is reasonable cause to believe
343 that this section has been violated and may commence a civil or
344 administrative action and seek such other relief as may be
345 appropriate.

346 (b) If there is a judicial finding that an employer has
347 violated this section, the court shall order that the employer's
348 license be suspended in the same manner and under the same terms
349 as provided in paragraphs (3) (f) and (g).

350 (6) NONDISCRIMINATION.—A complaint made under this section
351 may not be based on race, color, or national origin, except to
352 the extent permitted by the United States Constitution or the
353 State Constitution. A person who knowingly files a false and
354 frivolous complaint under this section commits a misdemeanor of
355 the second degree, punishable as provided in s. 775.082 or s.
356 775.083.

357 (7) CONSTRUCTION.—This section must be enforced without
358 regard to race, color, or national origin and shall be construed
359 in a manner so as to be fully consistent with any applicable
360 provisions of federal law.

361 Section 6. Section 448.09, Florida Statutes, is
362 transferred and renumbered as section 820.04, Florida Statutes.

363 Section 7. Effective January 1, 2012, section 287.135,
 364 Florida Statutes, is created to read:

365 287.135 Verification of immigration status; public
 366 employers.—

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

368 (a) "Contractor" means a person who has entered or is
 369 attempting to enter into a public contract for services with a
 370 public employer.

371 (b) "E-Verify system" has the same meaning as provided in
 372 s. 820.03.

373 (c) "Knowingly employ an unauthorized alien" has the same
 374 meaning as provided in s. 820.03.

375 (d) "Public employer" means any department, agency,
 376 county, municipality, or political subdivision of the state.

377 (e) "Subcontractor" means any supplier, distributor,
 378 vendor, or firm furnishing supplies or services to or for a
 379 contractor or another subcontractor.

380 (f) "Unauthorized alien" has the same meaning as provided
 381 in s. 820.03.

382 (2) Every public employer shall use the E-Verify system to
 383 verify the employment eligibility of all newly hired employees
 384 within the period stipulated by federal law or regulations after
 385 the hiring of the employee. However, a public employer is not
 386 required to verify the employment eligibility of a continuing
 387 employee hired before the date of the applicability of the
 388 verification requirements of this section on the employer.

389 (3) (a) A public employer may not knowingly employ an
 390 unauthorized alien.

HB 7089

2011

391 (b) For the purposes of this subsection, compliance with
392 subsection (2) creates a rebuttable presumption that a public
393 employer did not knowingly employ an unauthorized alien. A
394 public employer that establishes that it has complied in good
395 faith with the requirements of 8 U.S.C. s. 1324a(b) establishes
396 an affirmative defense that the public employer did not
397 knowingly employ an unauthorized alien. A public employer is
398 considered to have complied with the requirements of 8 U.S.C. s.
399 1324a(b), notwithstanding an isolated, sporadic, or accidental
400 technical or procedural failure to meet the requirements, if
401 there is a good faith attempt to comply with the requirements.

402 (4) (a) A contractor or subcontractor may not knowingly
403 employ an unauthorized alien.

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

407 2. A contractor or subcontractor may not enter into a
408 contract or subcontract with a public employer in connection
409 with the physical performance of services unless the contractor
410 or subcontractor registers with and uses the E-Verify system for
411 the purpose of verifying information of all newly hired
412 employees.

413 (c) If a contractor uses a subcontractor, the
414 subcontractor shall certify to the contractor that the
415 subcontractor, at the time of certification, does not employ or
416 contract with an unauthorized alien.

417 (d) A contractor shall maintain a copy of the
418 certification of a subcontractor throughout the duration of the

HB 7089

2011

419 term of a contract with the subcontractor.

420 (e) If a contractor knows that a subcontractor is in
421 violation of this subsection, the contractor shall terminate the
422 contract with the subcontractor.

423 (f) If a public employer knows that a contractor is in
424 violation of this subsection, the public employer shall
425 immediately terminate the contract with the contractor and the
426 contractor is not eligible for public contracts for 1 year after
427 the date of termination. If the public employer has knowledge
428 that a subcontractor has violated this subsection, and the
429 contractor has otherwise complied with this subsection, the
430 public employer shall promptly notify the contractor and order
431 the contractor to terminate the contract with the noncompliant
432 subcontractor.

433 (g) Termination of a contract pursuant to paragraph (e) or
434 paragraph (f) is not a breach of contract and may not be
435 considered as such by the contractor or subcontractor.

436 (h) A contractor or subcontractor may file an action with
437 a circuit or county court having jurisdiction in the county to
438 challenge a termination of a contract under this subsection no
439 later than 20 days after the date on which the contract or
440 subcontract was terminated.

441 (i) For the purposes of this subsection, compliance with
442 subparagraph (b)1. or subparagraph (b)2. creates a rebuttable
443 presumption that a contractor or subcontractor did not knowingly
444 employ an unauthorized alien. A contractor or subcontractor that
445 establishes that it has complied in good faith with the
446 requirements of 8 U.S.C. s. 1324a(b) establishes an affirmative

447 defense that the contractor or subcontractor did not knowingly
 448 employ an unauthorized alien. A contractor or subcontractor is
 449 considered to have complied with the requirements of 8 U.S.C. s.
 450 1324a(b), notwithstanding an isolated, sporadic, or accidental
 451 technical or procedural failure to meet the requirements, if
 452 there is a good faith attempt to comply with the requirements.

453 (5) This section shall be construed in a manner so as to
 454 be fully consistent with any applicable federal law and shall be
 455 enforced without regard to race, color, or national origin.

456 Section 8. Effective January 1, 2012, section 337.163,
 457 Florida Statutes, is created to read:

458 337.163 Compliance with federal work-authorization
 459 program.—

460 (1) As used in this section, the term:

461 (a) "Contractor" means a person who has entered or is
 462 attempting to enter into a contract with the department for
 463 services under this chapter.

464 (b) "E-Verify system" has the same meaning as provided in
 465 s. 820.03.

466 (c) "Knowingly employ an unauthorized alien" has the same
 467 meaning as provided in s. 820.03.

468 (d) "Subcontractor" means any supplier, distributor,
 469 vendor, or firm furnishing supplies or services to or for a
 470 contractor or another subcontractor under this chapter.

471 (e) "Unauthorized alien" has the same meaning as provided
 472 in s. 820.03.

473 (2) (a) A contractor or subcontractor may not knowingly
 474 employ an unauthorized alien.

HB 7089

2011

475 (b) The department may not enter into a contract under
476 this chapter for contractual services unless the contractor
477 registers and participates in the E-Verify system.

478 (c) A contractor who receives a contract award under this
479 chapter for contractual services may not execute a contract,
480 purchase order, or subcontract in connection with the award
481 unless the contractor and all subcontractors providing services
482 for the contractor register and participate in the E-Verify
483 system. The contractor shall certify in writing to the
484 department that it is in compliance with this section.

485 (d) A contractor shall ensure that each subcontractor
486 providing services for the contractor registers and participates
487 in the E-Verify system. Each subcontractor shall certify in
488 writing to the contractor that it is in compliance with this
489 section. A contractor shall maintain a copy of the certification
490 of a subcontractor throughout the duration of the term of a
491 contract with the subcontractor.

492 (e) If a contractor knows that a subcontractor is in
493 violation of this subsection, the contractor shall terminate the
494 contract with the subcontractor.

495 (f) If the department knows that a contractor is in
496 violation of this section, the department shall immediately
497 terminate the contract with the contractor and the contractor is
498 not eligible for public contracts for 1 year after the date of
499 termination. If the department has knowledge that a
500 subcontractor has violated this section, and the contractor has
501 otherwise complied with this section, the department shall
502 promptly notify the contractor and order the contractor to

HB 7089

2011

503 terminate the contract with the noncompliant subcontractor.

504 (g) Termination of a contract pursuant to paragraph (e) or
505 paragraph (f) is not a breach of contract and may not be
506 considered as such by the contractor or subcontractor.

507 (h) A contractor or subcontractor may file an action with
508 a circuit or county court having jurisdiction in the county to
509 challenge a termination of a contract under this subsection no
510 later than 20 days after the date on which the contract or
511 subcontract was terminated.

512 (i) For the purposes of this subsection, compliance with
513 paragraph (b) or paragraph (c) creates a rebuttable presumption
514 that a contractor or subcontractor did not knowingly employ an
515 unauthorized alien. A contractor or subcontractor that
516 establishes that it has complied in good faith with the
517 requirements of 8 U.S.C. s. 1324a(b) establishes an affirmative
518 defense that the contractor or subcontractor did not knowingly
519 employ an unauthorized alien. A contractor or subcontractor is
520 considered to have complied with the requirements of 8 U.S.C. s.
521 1324a(b), notwithstanding an isolated, sporadic, or accidental
522 technical or procedural failure to meet the requirements, if
523 there is a good faith attempt to comply with the requirements.

524 (3) This section shall be construed in a manner so as to
525 be fully consistent with any applicable federal law and shall be
526 enforced without regard to race, color, or national origin.

527 Section 9. Subsection (16) is added to section 901.15,
528 Florida Statutes, to read:

529 901.15 When arrest by officer without warrant is lawful.—A
530 law enforcement officer may arrest a person without a warrant

HB 7089

2011

531 when:

532 (16) The officer has probable cause to believe that the
 533 person to be arrested is unlawfully in the United States in
 534 violation of state and federal law.

535 Section 10. Paragraph (c) of subsection (2) of section
 536 903.046, Florida Statutes, is amended to read:

537 903.046 Purpose of and criteria for bail determination.—

538 (2) When determining whether to release a defendant on
 539 bail or other conditions, and what that bail or those conditions
 540 may be, the court shall consider:

541 (c) The defendant's family ties, length of residence in
 542 the community, legal residency status in the United States,
 543 employment history, financial resources, and mental condition.

544 Section 11. Section 921.245, Florida Statutes, is created
 545 to read:

546 921.245 Illegal alien multiplier; enhanced penalties.—Upon
 547 a finding by the trier of fact that the defendant committed the
 548 charged offense while the defendant was an alien and was
 549 unlawfully present in the United States, the penalty for any
 550 felony or misdemeanor, or any delinquent act or violation of law
 551 that would be a felony or misdemeanor if committed by an adult,
 552 may be enhanced. Penalty enhancement affects the applicable
 553 statutory maximum penalty only. Each of the findings required as
 554 a basis for such sentence must be found beyond a reasonable
 555 doubt. The enhancement shall be as follows:

556 (1) (a) A misdemeanor of the second degree may be punished
 557 as if it were a misdemeanor of the first degree.

558 (b) A misdemeanor of the first degree may be punished as

HB 7089

2011

559 if it were a felony of the third degree. For purposes of
560 sentencing under this chapter and determining incentive gain-
561 time eligibility under chapter 944, such offense shall be ranked
562 in level 1 of the offense severity ranking chart.

563 (2) (a) A felony of the third degree may be punished as if
564 it were a felony of the second degree.

565 (b) A felony of the second degree may be punished as if it
566 were a felony of the first degree.

567 (c) A felony of the first degree may be punished as if it
568 were a life felony.

569

570 For purposes of sentencing under this chapter and determining
571 incentive gain-time eligibility under chapter 944, such felony
572 offense shall be ranked as provided in s. 921.0022 or s.
573 921.0023, without regard to the penalty enhancement in this
574 subsection.

575 Section 12. Except as otherwise expressly provided in this
576 act, this act shall take effect October 1, 2011.