

1                   A bill to be entitled  
2           An act relating to the verification of employment  
3           eligibility; providing definitions; requiring  
4           employers to register with and use the E-Verify system  
5           beginning on a specified date to verify the employment  
6           eligibility of new employees; suspending certain  
7           employer licenses and providing for license  
8           reinstatement under certain conditions; prohibiting an  
9           employer from employing an unauthorized alien;  
10          authorizing certain persons to file a specified  
11          complaint with the Department of Economic Opportunity;  
12          prohibiting the filing of a complaint based on race,  
13          color, or national origin; providing that a person who  
14          knowingly files a false and frivolous complaint  
15          commits a misdemeanor of the second degree; providing  
16          criminal penalties; providing responsibilities and  
17          powers of the department relating to notice,  
18          investigations, and subpoenas for the production of  
19          records; prohibiting the department from independently  
20          making a final determination regarding whether an  
21          employee is an unauthorized alien; requiring the  
22          department to order an employer to take certain action  
23          upon the employer's first violation of hiring an  
24          unauthorized alien; requiring the department to order  
25          an agency to take certain action against an employer

26 | upon the employer's second violation of hiring an  
27 | unauthorized alien within a specified period of time;  
28 | providing civil immunity for an employer registered  
29 | with and using the E-Verify system; providing  
30 | specified immunity and nonliability for an employer  
31 | who complies in good faith with the E-Verify system;  
32 | requiring the department to maintain a public database  
33 | containing certain information and make such  
34 | information available on its website; authorizing the  
35 | department to apply for a judicial order directing an  
36 | employer to comply with an order issued by the  
37 | department; creating a rebuttable presumption for  
38 | certain employers that the employer did not knowingly  
39 | employ an unauthorized alien; authorizing an employer  
40 | or employee to seek an injunction under certain  
41 | circumstances; providing that certain actions by an  
42 | employer constitute a deceptive and unfair trade  
43 | practice; providing that an employee aggrieved by such  
44 | actions has a private cause of action against the  
45 | employer and providing available remedies; providing  
46 | that a cause of action does not exist against an  
47 | employer under specified circumstances; providing  
48 | construction; creating s. 287.137, F.S.; providing  
49 | definitions; requiring public employers, contractors,  
50 | and subcontractors to register with and use the E-

51 Verify system; prohibiting such entities from entering  
 52 into a contract unless each party to the contract  
 53 registers with and uses the E-Verify system; requiring  
 54 a subcontractor to provide certain certification to a  
 55 contractor, which the contractor must maintain for a  
 56 specified period of time; authorizing the termination  
 57 of a contract under certain conditions; providing that  
 58 such termination is not a breach of contract;  
 59 authorizing a challenge to such termination; providing  
 60 construction; providing an effective date.

61

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

63

64 Section 1. Use of E-Verify system required for private  
 65 employers; business licensing enforcement; private right of  
 66 action for wrongfully discharged employee.-

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

68 (a) "Agency" means an agency, department, board, or  
 69 commission of this state or a county, municipality, or town  
 70 issuing a license to operate a business in this state.

71 (b) "Department" means the Department of Economic  
 72 Opportunity.

73 (c) "E-Verify system" means an Internet-based system  
 74 operated by the United States Department of Homeland Security  
 75 that allows participating employers to electronically verify the

76 employment eligibility of newly hired employees.

77 (d) "Employee" means a person who performs labor or  
78 services for an employer in exchange for salary, wages, or other  
79 remuneration. The term does not include a licensed independent  
80 contractor as defined in federal laws or regulations.

81 (e) "Employer" means a person or entity that employs  
82 persons to perform labor or services in exchange for salary,  
83 wages, or other remuneration. The term does not include:

84 1. A government employer;

85 2. The occupant or owner of a private residence who hires:

86 a. Casual labor, as defined in s. 443.036, to be performed  
87 entirely within the private residence; or

88 b. A licensed independent contractor, as defined in  
89 federal laws or regulations, to perform a specified portion of  
90 labor or services; or

91 3. An employee leasing company licensed pursuant to part  
92 XI of chapter 468 that enters into a written agreement or  
93 understanding with a client company which places the primary  
94 obligation for compliance with this section upon the client  
95 company. In the absence of a written agreement or understanding,  
96 the employee leasing company is responsible for compliance with  
97 this section. Such employee leasing company shall, at all times,  
98 remain an employer as otherwise defined in federal laws or  
99 regulations.

100 (f) "Knowingly employ an unauthorized alien" has the same

101 meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted  
 102 consistently with 8 U.S.C. s. 1324a and any applicable federal  
 103 rules or regulations.

104 (g) "License" means a franchise, permit, certificate,  
 105 approval, registration, charter, or similar form of  
 106 authorization required by state law and issued by an agency for  
 107 the purpose of operating a business in this state. The term  
 108 includes, but is not limited to:

- 109 1. An article of incorporation.
- 110 2. A certificate of partnership, partnership registration,  
 111 or article of organization.
- 112 3. A grant of authority issued pursuant to state or  
 113 federal law.
- 114 4. A transaction privilege tax license.

115 (h) "Unauthorized alien" means a person who is not  
 116 authorized under federal law to be employed in the United  
 117 States, as described in 8 U.S.C. s. 1324a(h) (3). The term shall  
 118 be interpreted consistently with that section and any applicable  
 119 federal rules or regulations.

120 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF  
 121 BUSINESS LICENSE.—

122 (a) Beginning January 1, 2020, an employer shall, after  
 123 making an offer of employment which has been accepted by a  
 124 person, use the E-Verify system to verify such person's  
 125 employment eligibility. Verification must occur within the

126 period stipulated by applicable federal rules or regulations.  
127 However, an employer is not required to verify the employment  
128 eligibility of a continuing employee hired before the date of  
129 the employer's registration with the E-Verify system.

130 (b) A business that does not comply with paragraph (a)  
131 shall lose its license to do business in this state until it  
132 registers with the E-Verify system and provides the department  
133 with an affidavit stating such fact.

134 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE  
135 AND FRIVOLOUS COMPLAINTS; VIOLATION; CLASSIFICATION; SUSPENSION  
136 AND REVOCATION OF LICENSE.—Beginning January 1, 2020:

137 (a) An employer may not knowingly employ an unauthorized  
138 alien.

139 (b) A person who has a good faith belief that an employer  
140 knowingly employs, or has within the last 90 calendar days  
141 knowingly employed, an unauthorized alien may file a complaint  
142 with the department.

143 (c) A complaint may not be based on race, color, or  
144 national origin, except to the extent permitted by state or  
145 federal law.

146 (d) A person who knowingly files a false and frivolous  
147 complaint under this subsection commits a misdemeanor of the  
148 second degree, punishable as provided in s. 775.082, Florida  
149 Statutes, or s. 775.083, Florida Statutes.

150 (e) Upon the receipt of a valid complaint of a violation

151 of paragraph (a), the department shall notify the employer of  
152 the complaint and direct the employer to notify any employees  
153 named in the complaint.

154 (f) The department shall investigate whether a violation  
155 of paragraph (a) has occurred and hold an administrative hearing  
156 at which the employer has the right to counsel and may present  
157 any evidence it desires. The department shall request that the  
158 Federal Government verify, pursuant to 8 U.S.C. s. 1373(c), the  
159 work authorization status of any employee named in the  
160 complaint, and the department must rely upon such verification.  
161 The department may not independently make a final determination  
162 as to whether an employee is an unauthorized alien.

163 (g) The department may issue a subpoena for an employer to  
164 produce employment records that relate to employment  
165 recruitment, hiring, or termination policies, practices, or acts  
166 relating to the investigation of a valid complaint of a  
167 violation of paragraph (a).

168 (h) Upon finding that an employer has violated paragraph  
169 (a), the department shall notify:

170 1. The United States Immigration and Customs Enforcement  
171 Agency of the identity of the unauthorized alien and, if known,  
172 the physical address at which the unauthorized alien resides.

173 2. The local law enforcement agency of the jurisdiction in  
174 which the unauthorized alien resides.

175 (i)1. Upon finding that an employer has violated paragraph

176 (a), the department shall order the employer to:  
177 a. Terminate the employment of all unauthorized aliens.  
178 b. File a sworn affidavit with the department within 10  
179 calendar days after receipt of the order. The affidavit must  
180 state that the employer has corrected such violation by:  
181 (I) Terminating the employment of all unauthorized aliens;  
182 or  
183 (II) Attempting to terminate the employment of all  
184 unauthorized aliens but such termination is being challenged in  
185 a court of competent jurisdiction.  
186 2. If the employer fails to file the affidavit under  
187 subparagraph 1., the department shall order the appropriate  
188 agencies to suspend all applicable licenses held by the employer  
189 until the affidavit is filed. Notwithstanding any other law, the  
190 suspended licenses shall be deemed to have been reinstated upon  
191 the filing of the affidavit. During the pendency of any court  
192 action or challenge to an E-Verify system determination, the 10-  
193 calendar-day period shall be tolled.  
194 3. Licenses subject to suspension under subparagraph 2.  
195 include all licenses that are held by the employer that are  
196 necessary to operate the employer's business at the specific  
197 location at which the unauthorized alien performed work. If a  
198 license is not necessary to operate the employer's business at  
199 such location, but a license is necessary to operate the  
200 employer's business in general, the licenses subject to



201 suspension under subparagraph 2. shall include all licenses held  
202 by the employer at the employer's primary place of business.

203 (j) Upon finding that a second or subsequent violation of  
204 paragraph (a) occurred during a 2-year period, the department  
205 shall order the appropriate agencies to suspend, for at least 30  
206 calendar days, all licenses held by the employer that are  
207 necessary to operate the employer's business at the specific  
208 location at which the unauthorized alien performed work. If a  
209 license is not necessary to operate the employer's business at  
210 such location, but a license is necessary to operate the  
211 employer's business in general, the department shall order the  
212 appropriate agencies to suspend, for at least 30 calendar days,  
213 all licenses held by the employer at the employer's primary  
214 place of business.

215 (k)1. An employer registered with and using the E-Verify  
216 system may not be held civilly liable in a cause of action for  
217 the employer's:

218 a. Unlawful hiring of an unauthorized alien if the  
219 information obtained from the E-Verify system indicated that the  
220 person's work authorization status was not that of an  
221 unauthorized alien; or

222 b. Refusal to hire a person if the information obtained  
223 from the E-Verify system indicated that the person's work  
224 authorization status was that of an unauthorized alien.

225 2. An employer who in good faith registers with and uses

226 | the E-Verify system is considered to have complied with the  
227 | requirements of 8 U.S.C. s. 1324a(b) and may not be held liable  
228 | for any damages and shall be immune from any legal cause of  
229 | action brought by any person or entity, including former  
230 | employees, for the use of and reliance upon any incorrect  
231 | information obtained from the E-Verify system, including any  
232 | incorrect information obtained as a result of an isolated,  
233 | sporadic, or accidental technical or procedural failure, when  
234 | determining final action on a person's work authorization  
235 | status.

236 |       (1) The department shall maintain a public database  
237 | containing copies of all orders issued pursuant to this  
238 | subsection and make such information available on its website.

239 |       (m) If the department determines that an agency or  
240 | employer has failed to comply with an order under this  
241 | subsection, the department may apply to the circuit court for a  
242 | judicial order directing the agency or employer to comply with  
243 | such order.

244 |       (n) For purposes of this subsection, compliance with  
245 | paragraph (2) (a) creates a rebuttable presumption that an  
246 | employer did not knowingly employ an unauthorized alien in  
247 | violation of paragraph (a).

248 |       (4) INJUNCTION.—At any time after the department has  
249 | notified an employer that a valid complaint of a violation of  
250 | paragraph (3) (a) was received, and up to 30 calendar days after

251 the date on which the department issues an order pursuant to  
252 paragraph (3)(i), the employer subject to the complaint, or any  
253 employee who is alleged to be an unauthorized alien, may  
254 challenge and seek to enjoin the enforcement of this section  
255 before a court of competent jurisdiction.

256 (5) DECEPTIVE AND UNFAIR TRADE PRACTICE.—

257 (a) An employer commits a deceptive and unfair trade  
258 practice in violation of part II of chapter 501, Florida  
259 Statutes, if it discharges an employee who is a United States  
260 citizen or resident alien, as defined in s. 379.101(31), Florida  
261 Statutes, while knowingly employing an unauthorized alien at the  
262 same job site or in the same job classification elsewhere in  
263 this state.

264 (b) The discharged employee has a private cause of action  
265 against the employer for a violation of this subsection. The  
266 available remedies to the discharged employee are reinstatement,  
267 back pay, court costs, and attorney fees. Criminal or civil  
268 sanctions, including fines, shall not be imposed against an  
269 employer for a violation of this subsection.

270 (c) A cause of action under this subsection does not exist  
271 against an employer who, on the date it discharged an employee  
272 as described in paragraph (a), was registered with and used the  
273 E-Verify system to verify a person's work authorization status.

274 (6) CONSTRUCTION.—This section shall be enforced without  
275 regard to race, color, or national origin and shall be construed

276 in a manner so as to be fully consistent with any applicable  
277 federal laws or regulations.

278 Section 2. Section 287.137, Florida Statutes, is created  
279 to read:

280 287.137 Verification of work authorization status; public  
281 employers.—

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

283 (a) "Contractor" means a person or entity that has entered  
284 or is attempting to enter into a contract with a public employer  
285 to provide labor, supplies, or services to such employer in  
286 exchange for salary, wages, or other remuneration.

287 (b) "E-Verify system" means an Internet-based system  
288 operated by the United States Department of Homeland Security  
289 that allows participating employers to electronically verify the  
290 employment eligibility of newly hired employees.

291 (c) "Public employer" means a department, agency, or  
292 political subdivision of this state that enters or attempts to  
293 enter into a contract with a contractor.

294 (d) "Subcontractor" means a person or entity that provides  
295 labor, supplies, or services to or for a contractor or another  
296 subcontractor in exchange for salary, wages, or other  
297 remuneration.

298 (e) "Unauthorized alien" means a person who is not  
299 authorized under federal law to be employed in the United  
300 States, as described in 8 U.S.C. s. 1324a(h) (3). The term shall

301 be interpreted consistently with that section and any applicable  
302 federal rules or regulations.

303 (2) (a) Every public employer, contractor, and  
304 subcontractor shall register with and use the E-Verify system to  
305 verify the work authorization status of all new employees.

306 (b) A public employer, contractor, or subcontractor may  
307 not enter into a contract under this section unless each party  
308 to the contract registers with and uses the E-Verify system.

309 (3) (a) If a contractor enters into a contract with a  
310 subcontractor, the subcontractor shall certify to the contractor  
311 in a manner that does not violate federal law that the  
312 subcontractor, at the time of such certification, does not  
313 employ, contract, or subcontract with an unauthorized alien.

314 (b) A contractor shall maintain a copy of such  
315 certification for the duration of the contract with the  
316 subcontractor.

317 (4) (a) A public employer, contractor, or subcontractor who  
318 has a good faith belief that a person or entity with which it is  
319 contracting has knowingly violated this section shall terminate  
320 the contract with the person or entity.

321 (b) A public employer that has a good faith belief that a  
322 subcontractor knowingly violated this section, but the  
323 contractor otherwise complied with this section, shall promptly  
324 notify the contractor and order the contractor to immediately  
325 terminate the contract with the subcontractor.

326 (c) A contract terminated pursuant to paragraph (a) or  
327 paragraph (b) is not a breach of contract and may not be  
328 considered as such.

329 (d) A public employer, contractor, or subcontractor may  
330 file an action with a circuit or county court to challenge a  
331 termination under paragraph (a) or paragraph (b) no later than  
332 20 calendar days after the date on which the contract was  
333 terminated.

334 (e) If a public employer terminates a contract with a  
335 contractor pursuant to paragraph (a), the contractor may not be  
336 awarded a public contract for at least 1 year after the date on  
337 which the contract was terminated.

338 (5) This section shall be construed in a manner so as to  
339 be fully consistent with any applicable federal laws or  
340 regulations.

341 Section 3. This act shall take effect July 1, 2019.