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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 287.137, Florida Statutes, is created to
read:

287.137 Verification of work authorization status; public
employers.-

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

(a) "Contractor" means a person or an entity that has more
than 10 employees and has entered into, or is attempting to



569026

12 enter into, a contract with a public employer to provide labor,
13 supplies, or services to such employer.

14 (b) "Employee" has the same meaning as provided in s.
15 448.093.

16 (c) "Employment verification system" has the same meaning
17 as provided in s. 448.093.

18 (d) "Public employer" means a department, an agency, or a
19 political subdivision of this state which enters into, or
20 attempts to enter into, a contract with a contractor for an
21 amount that will, or is expected to, exceed the CATEGORY FOUR
22 threshold amount provided in s. 287.017.

23 (e) "Subcontractor" means a person or an entity that has
24 more than 10 employees and provides labor, supplies, or services
25 to or for a contractor or another subcontractor pursuant to a
26 contract that will, or is expected to, exceed the CATEGORY THREE
27 threshold amount provided in s. 287.017.

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

33 (2) On or after July 1, 2022:

34 (a) Every public employer, contractor, and subcontractor
35 shall register with and use an employment verification system to
36 verify the work authorization status of all new employees and
37 identify whether an employee is an unauthorized alien.

38 (b) A public employer or a contractor or subcontractor in
39 this state may not enter into a contract under this section
40 unless each party to the contract registers with and uses an



569026

41 employment verification system.

42 Section 2. Section 448.093, Florida Statutes, is created to
43 read:

44 448.093 Definitions; use of employment verification system
45 required for private employers; business licensing enforcement.-

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

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

50 (b) "Department" means the Department of Economic
51 Opportunity.

52 (c) "Employee" means an individual whose work is performed
53 under the direction and supervision of the employer and whose
54 employer withholds tax pursuant to the Federal Insurance
55 Contributions Act (FICA) or federal income tax from the
56 individual's compensation, or whose employer issues an Internal
57 Revenue Service W-2 form, but not an Internal Revenue Service
58 Form 1099, to an individual for purposes of documenting
59 compensation. The term does not include a licensed independent
60 contractor as defined in federal laws or regulations.

61 (d) "Employer" means a person or an entity in this state
62 which employs an employee. The term does not include:

63 1. A government employer.

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

65 a. Casual labor, as defined in s. 443.036, to be performed
66 entirely within the private residence;

67 b. A licensed independent contractor, as defined in federal
68 laws or regulations, to perform a specified portion of labor or
69 services; or



569026

70 c. An agricultural employer, which includes any person who
71 owns or operates a farm, ranch, processing establishment,
72 cannery, gin, packing shed, or nursery, or who produces or
73 conditions seed, and who either recruits, solicits, hires,
74 employs, furnishes, or transports any migrant or seasonal
75 agricultural worker. This sub-subparagraph is repealed 90 days
76 after the effective date of any federal law, rule, regulation,
77 or program that authorizes this state or a federal agency to
78 grant temporary legal status to an unauthorized alien who can
79 demonstrate that he or she has performed agricultural work in
80 the United States for not fewer than 575 hours or 100 work days
81 during a 2-year period and has maintained a continuous presence
82 in the United States, except for brief absences, during that
83 period.

84 3. An employee leasing company licensed pursuant to part XI
85 of chapter 468 which enters into a written agreement or
86 understanding with a client company which places the primary
87 obligation for compliance with this section upon the client
88 company. In the absence of a written agreement or understanding,
89 the term includes an employee leasing company.

90 (e) "Employment verification system" means:

91 1. An Internet-based system operated by the United States
92 Department of Homeland Security which allows participating
93 employers to electronically verify the employment eligibility of
94 newly hired employees; or

95 2. A substantially equivalent electronic employment
96 verification system that is permissible under department rule.

97 (f) "Knowingly employ an unauthorized alien" has the same
98 meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted



569026

99 consistently with 8 U.S.C. s. 1324a and any applicable federal
100 rules or regulations.

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

106 1. An article of incorporation.

107 2. A certificate of partnership, partnership registration,
108 or article of organization.

109 3. A grant of authority issued pursuant to state or federal
110 law.

111 4. A transaction privilege tax license.

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

117 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; FINE FOR
118 VIOLATION; SUSPENSION OF BUSINESS LICENSE.—

119 (a) An employer shall, after making an offer of employment
120 which has been accepted by a person, use an employment
121 verification system to verify such person's employment
122 eligibility. Verification must occur within the period
123 stipulated by applicable federal rules or regulations. However,
124 an employer is not required to verify the employment eligibility
125 of a continuing employee hired before the date of the employer's
126 registration with an employment verification system.

127 (b) The requirement to use an employment verification



569026

128 system shall be phased in as follows:

129 1. Employers having at least 500 employees must use an
130 employment verification system beginning January 1, 2021.

131 2. Employers having at least 250 employees must use an
132 employment verification system beginning July 1, 2021.

133 3. Employers having at least 150 employees must use an
134 employment verification system beginning January 1, 2022.

135 4. Employers having more than 10 employees must use an
136 employment verification system 90 days after the effective date
137 of any federal law, rule, regulation, or program that authorizes
138 this state to issue a work permit, whether temporary or
139 permanent, to a qualifying undocumented alien.

140 (c) If an employer does not register with an employment
141 verification system, the department may impose a fine of up to
142 \$500 on the employer, who must then register with an employment
143 verification system and provide an affidavit of stating such
144 fact to the department within 30 days. If the employer does not
145 register with and provide the required affidavit within 30 days
146 after the imposition of the fine becomes final, the department
147 must order the appropriate agency to suspend all applicable
148 licenses held by the employer until the employer registers with
149 an employment verification system and provides the department
150 with the required affidavit.

151 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY.—

152 (a)1. An employer registered with and using an employment
153 verification system may not be held civilly liable in a cause of
154 action for the employer's:

155 a. Hiring of an unauthorized alien if the information
156 obtained from the employment verification system indicated that



569026

157 the person's work authorization status was not that of an
158 unauthorized alien; or

159 b. Refusal to hire a person if the information obtained
160 from the employment verification system indicated that the
161 person's work authorization status was that of an unauthorized
162 alien.

163 2. An employer who in good faith registers with and uses an
164 employment verification system is considered to have complied
165 with the requirements of 8 U.S.C. s. 1324a(b) and may not be
166 held liable for any damages and is immune from any legal cause
167 of action brought by any person or entity, including former
168 employees, for the use of and reliance upon any incorrect
169 information obtained from the employment verification system,
170 including any incorrect information obtained as a result of an
171 isolated, sporadic, or accidental technical or procedural
172 failure, when determining final action on a person's work
173 authorization status.

174 (b) For purposes of this subsection, compliance with
175 subsection (2) creates a rebuttable presumption that an employer
176 did not knowingly employ an unauthorized alien in violation of
177 s. 448.09.

178 (4) RULEMAKING.—The department shall adopt rules to define
179 an employment verification system, if any, that is substantially
180 equivalent to or more effective than the E-Verify system with
181 respect to identifying unauthorized aliens and those persons
182 eligible to work in the United States. The rules must identify
183 the types of databases, methodologies, and evidence of identity
184 and employment eligibility that qualify an employment
185 verification system as substantially equivalent to or more



569026

186 effective than the E-Verify system.

187 Section 3. This act shall take effect July 1, 2020.

188

189 ===== T I T L E A M E N D M E N T =====

190 And the title is amended as follows:

191 Delete everything before the enacting clause

192 and insert:

193 A bill to be entitled

194 An act relating to the verification of employment
195 eligibility; creating s. 287.137, F.S.; defining
196 terms; requiring public employers and certain
197 contractors and subcontractors to register with and
198 use an employment verification system by a specified
199 date; prohibiting public employers, contractors, and
200 subcontractors from entering into a contract unless
201 each party to the contract registers with and uses an
202 employment verification system; creating s. 448.093,
203 F.S.; defining terms; requiring employers who meet
204 specified criteria to register with and use an
205 employment verification system to verify the
206 employment eligibility of new employees; prescribing
207 an implementation schedule for the employment
208 verification requirement; authorizing the imposition
209 of fines for violations of the act; requiring a
210 violating employer to submit certain affidavits to the
211 Department of Economic Opportunity; requiring the
212 department to order the appropriate licensing agency
213 to suspend an employer's license under certain
214 circumstances; providing civil immunity for an



569026

215 employer registered with and using an employment
216 verification system; providing specified immunity and
217 nonliability for an employer who complies in good
218 faith with the requirements of the act; creating a
219 rebuttable presumption for certain employers that the
220 employer did not knowingly employ an unauthorized
221 alien; requiring the department to define by rule
222 employment verification systems substantially
223 equivalent to the E-Verify system; providing
224 requirements for such rules; providing an effective
225 date.