

By Senator Lee

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1 A bill to be entitled
2 An act relating to the verification of employment
3 eligibility; defining terms; requiring employers to
4 register with and use the E-Verify system beginning on
5 a specified date to verify the employment eligibility
6 of new employees; requiring the Department of Economic
7 Opportunity to order certain agencies to suspend an
8 employer's license under certain circumstances;
9 prohibiting an employer from knowingly employing an
10 unauthorized alien; authorizing certain persons to
11 file a specified complaint with the department;
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 or frivolous complaint commits
15 a misdemeanor of the second degree; providing
16 responsibilities and powers of the department relating
17 to notice, investigations, and subpoenas for the
18 production of records; prohibiting the department from
19 independently making a final determination regarding
20 whether an employee is an unauthorized alien;
21 requiring the department to notify the United States
22 Immigration and Customs Enforcement Agency and
23 specified law enforcement agencies of certain
24 violations; requiring the department to order certain
25 employers to take specified actions after the finding
26 of a violation; providing for the suspension of an
27 employer's license upon the finding of certain
28 violations; providing civil immunity for an employer
29 registered with and using the E-Verify system;

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30 providing specified immunity and nonliability for an
31 employer who complies in good faith with the E-Verify
32 system; requiring the department to maintain a public
33 database 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 agency or employer to comply with an order issued by
37 the 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.; defining
49 terms; requiring public employers, contractors, and
50 subcontractors to register with and use the E-Verify
51 system; prohibiting such entities from entering into a
52 contract unless each party to the contract registers
53 with and uses the E-Verify system; requiring a
54 subcontractor to provide certain certification to a
55 contractor, which the contractor must maintain for a
56 specified period of time; requiring the termination of
57 a contract under certain conditions; providing that
58 such termination is not a breach of contract;

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59 authorizing a challenge to such termination;
 60 prohibiting a contractor from being awarded a public
 61 contract under certain circumstances; providing
 62 construction; providing an effective date.
 63

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

65
 66 Section 1. Definitions; use of E-Verify system required for
 67 private employers; business licensing enforcement; private right
 68 of action for wrongfully discharged employee.-

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

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

73 (b) "Department" means the Department of Economic
 74 Opportunity.

75 (c) "E-Verify system" means an Internet-based system
 76 operated by the United States Department of Homeland Security
 77 which allows participating employers to electronically verify
 78 the employment eligibility of newly hired employees.

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

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

86 1. A government employer.

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

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88 a. Casual labor, as defined in s. 443.036, Florida
89 Statutes, to be performed entirely within the private residence;
90 or

91 b. A licensed independent contractor, as defined in federal
92 laws or regulations, to perform a specified portion of labor or
93 services.

94 3. An employee leasing company licensed pursuant to part XI
95 of chapter 468, Florida Statutes, which enters into a written
96 agreement or understanding with a client company which places
97 the primary obligation for compliance with this section upon the
98 client company. In the absence of a written agreement or
99 understanding, the term includes an employee leasing company.

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, a permit, a certificate,
105 an approval, a registration, a charter, or any 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 federal
113 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

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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, 2021, 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) If an employer does not register with the E-Verify
131 system, the department must order the appropriate agency to
132 suspend all applicable licenses held by the employer until the
133 employer registers with the E-Verify system and provides the
134 department with an affidavit stating such fact.

135 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE
136 AND FRIVOLOUS COMPLAINTS; VIOLATION; CLASSIFICATION; SUSPENSION
137 AND REVOCATION OF LICENSE.—Beginning January 1, 2021:

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

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

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

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146 federal law.

147 (d) A person who knowingly files a false or frivolous
148 complaint under this subsection commits a misdemeanor of the
149 second degree, punishable as provided in s. 775.082 or s.
150 775.083, Florida Statutes.

151 (e) Upon the receipt of a valid complaint of a violation of
152 paragraph (a), the department must notify the employer of the
153 complaint and direct the employer to notify any employees named
154 in the complaint.

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

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

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

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

174 2. The local law enforcement agency of the jurisdiction in

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175 which the unauthorized alien resides.

176 (i)1. Upon finding that an employer has violated paragraph
177 (a), the department must order the employer to:

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

179 b. File a sworn affidavit with the department within 10
180 calendar days after receipt of the order. The affidavit must
181 state that the employer has corrected such violation by:

182 (I) Terminating the employment of all unauthorized aliens;

183 or

184 (II) Attempting to terminate the employment of all
185 unauthorized aliens but such termination is being challenged in
186 a court of competent jurisdiction.

187 2. If the employer fails to file the affidavit under
188 subparagraph 1., the department must order the appropriate
189 agencies to suspend all applicable licenses held by the employer
190 until the affidavit is filed. Notwithstanding any other law, the
191 suspended licenses are deemed to have been reinstated upon the
192 filing of the affidavit. During the pendency of any court action
193 or challenge to an E-Verify system determination, the 10-
194 calendar-day period shall be tolled.

195 3. Licenses subject to suspension under subparagraph 2.
196 include all licenses that are held by the employer that are
197 necessary to operate the employer's business at the specific
198 location at which the unauthorized alien performed work. If a
199 license is not necessary to operate the employer's business at
200 such location, but a license is necessary to operate the
201 employer's business in general, the licenses subject to
202 suspension under subparagraph 2. include all licenses held by
203 the employer at the employer's primary place of business.

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

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

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

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

226 2. An employer who in good faith registers with and uses
227 the E-Verify system is considered to have complied with the
228 requirements of 8 U.S.C. s. 1324a(b) and may not be held liable
229 for any damages and is immune from any legal cause of action
230 brought by any person or entity, including former employees, for
231 the use of and reliance upon any incorrect information obtained
232 from the E-Verify system, including any incorrect information

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233 obtained as a result of an isolated, sporadic, or accidental
234 technical or procedural failure, when determining final action
235 on a person's work authorization status.

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

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

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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, may 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 to
279 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 an entity that has
284 entered into, or is attempting to enter into, a contract with a
285 public employer to provide labor, supplies, or services to such
286 employer in 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 which allows participating employers to electronically verify
290 the employment eligibility of newly hired employees.

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

294 (d) "Subcontractor" means a person or an entity that
295 provides labor, supplies, or services to or for a contractor or
296 another 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 subcontractor
304 shall register with and use the E-Verify system to verify the
305 work authorization status of all new employees.

306 (b) A public employer, contractor, or subcontractor may not
307 enter into a contract under this section unless each party to
308 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

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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 be
339 fully consistent with any applicable federal laws or
340 regulations.

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