

By the Committee on Judiciary; and Senators Lee, Gruters, and Harrell

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1                                   A bill to be entitled  
2       An act relating to the verification of employment  
3       eligibility; creating s. 287.137, F.S.; defining  
4       terms; requiring public employers and certain  
5       contractors and subcontractors to register with and  
6       use an employment verification system by a specified  
7       date; prohibiting public employers, contractors, and  
8       subcontractors from entering into a contract unless  
9       each party to the contract registers with and uses an  
10      employment verification system; creating s. 448.093,  
11      F.S.; defining terms; requiring employers who meet  
12      specified criteria to register with and use an  
13      employment verification system to verify the  
14      employment eligibility of new employees; prescribing  
15      an implementation schedule for the employment  
16      verification requirement; authorizing the imposition  
17      of fines for violations of the act; requiring a  
18      violating employer to submit certain affidavits to the  
19      Department of Economic Opportunity; requiring the  
20      department to order the appropriate licensing agency  
21      to suspend an employer's license under certain  
22      circumstances; providing civil immunity for an  
23      employer registered with and using an employment  
24      verification system; providing specified immunity and  
25      nonliability for an employer who complies in good  
26      faith with the requirements of the act; creating a  
27      rebuttable presumption for certain employers that the  
28      employer did not knowingly employ an unauthorized  
29      alien; requiring the department to define by rule

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30 employment verification systems substantially  
31 equivalent to the E-Verify system; providing  
32 requirements for such rules; providing an effective  
33 date.

34  
35 Be It Enacted by the Legislature of the State of Florida:

36  
37 Section 1. Section 287.137, Florida Statutes, is created to  
38 read:

39 287.137 Verification of work authorization status; public  
40 employers.-

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

42 (a) "Contractor" means a person or an entity that has more  
43 than 10 employees and has entered into, or is attempting to  
44 enter into, a contract with a public employer to provide labor,  
45 supplies, or services to such employer.

46 (b) "Employee" has the same meaning as provided in s.  
47 448.093.

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

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

55 (e) "Subcontractor" means a person or an entity that has  
56 more than 10 employees and provides labor, supplies, or services  
57 to or for a contractor or another subcontractor pursuant to a  
58 contract that will, or is expected to, exceed the CATEGORY THREE

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59 threshold amount provided in s. 287.017.

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

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

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

70 (b) A public employer or a contractor or subcontractor in  
71 this state may not enter into a contract under this section  
72 unless each party to the contract registers with and uses an  
73 employment verification system.

74 Section 2. Section 448.093, Florida Statutes, is created to  
75 read:

76 448.093 Definitions; use of employment verification system  
77 required for private employers; business licensing enforcement.-

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

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

82 (b) "Department" means the Department of Economic  
83 Opportunity.

84 (c) "Employee" means an individual whose work is performed  
85 under the direction and supervision of the employer and whose  
86 employer withholds tax pursuant to the Federal Insurance  
87 Contributions Act (FICA) or federal income tax from the

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88 individual's compensation, or whose employer issues an Internal  
89 Revenue Service W-2 form, but not an Internal Revenue Service  
90 Form 1099, to an individual for purposes of documenting  
91 compensation. The term does not include a licensed independent  
92 contractor as defined in federal laws or regulations.

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

95 1. A government employer.

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

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

99 b. A licensed independent contractor, as defined in federal  
100 laws or regulations, to perform a specified portion of labor or  
101 services.

102 3. An agricultural employer, which includes any person who  
103 owns or operates a farm, ranch, processing establishment,  
104 cannery, gin, packing shed, or nursery, or who produces or  
105 conditions seed, and who either recruits, solicits, hires,  
106 employs, furnishes, or transports any migrant or seasonal  
107 agricultural worker. This subparagraph is repealed 90 days after  
108 the effective date of any federal law, rule, regulation, or  
109 program that authorizes this state or a federal agency to grant  
110 temporary legal status to an unauthorized alien who can  
111 demonstrate that he or she has performed agricultural work in  
112 the United States for not fewer than 575 hours or 100 work days  
113 during a 2-year period and has maintained a continuous presence  
114 in the United States, except for brief absences, during that  
115 period.

116 4. An employee leasing company licensed pursuant to part XI

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117 of chapter 468 which enters into a written agreement or  
118 understanding with a client company which places the primary  
119 obligation for compliance with this section upon the client  
120 company. In the absence of a written agreement or understanding,  
121 the term includes an employee leasing company.

122 (e) "Employment verification system" means:

123 1. An Internet-based system operated by the United States  
124 Department of Homeland Security which allows participating  
125 employers to electronically verify the employment eligibility of  
126 newly hired employees; or

127 2. A substantially equivalent electronic employment  
128 verification system that is permissible under department rule.

129 (f) "Knowingly employ an unauthorized alien" has the same  
130 meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted  
131 consistently with 8 U.S.C. s. 1324a and any applicable federal  
132 rules or regulations.

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

138 1. An article of incorporation.

139 2. A certificate of partnership, a partnership  
140 registration, or an article of organization.

141 3. A grant of authority issued pursuant to state or federal  
142 law.

143 4. A transaction privilege tax license.

144 (h) "Unauthorized alien" means a person who is not  
145 authorized under federal law to be employed in the United

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146 States, as described in 8 U.S.C. s. 1324a(h) (3). The term shall  
147 be interpreted consistently with that section and any applicable  
148 federal rules or regulations.

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

151 (a) An employer shall, after making an offer of employment  
152 which has been accepted by a person, use an employment  
153 verification system to verify such person's employment  
154 eligibility. Verification must occur within the period  
155 stipulated by applicable federal rules or regulations. However,  
156 an employer is not required to verify the employment eligibility  
157 of a continuing employee hired before the date of the employer's  
158 registration with an employment verification system.

159 (b) The requirement to use an employment verification  
160 system shall be phased in as follows:

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

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

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

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

172 (c) If an employer does not register with an employment  
173 verification system, the department may impose a fine of up to  
174 \$500 on the employer, who must then register with an employment

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175 verification system and provide an affidavit of stating such  
176 fact to the department within 30 days. If the employer does not  
177 register with and provide the required affidavit within 30 days  
178 after the imposition of the fine becomes final, the department  
179 must order the appropriate agency to suspend all applicable  
180 licenses held by the employer until the employer registers with  
181 an employment verification system and provides the department  
182 with the required affidavit.

183 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY.-

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

187 a. Hiring of an unauthorized alien if the information  
188 obtained from the employment verification system indicated that  
189 the person's work authorization status was not that of an  
190 unauthorized alien; or

191 b. Refusal to hire a person if the information obtained  
192 from the employment verification system indicated that the  
193 person's work authorization status was that of an unauthorized  
194 alien.

195 2. An employer who in good faith registers with and uses an  
196 employment verification system is considered to have complied  
197 with the requirements of 8 U.S.C. s. 1324a(b) and may not be  
198 held liable for any damages and is immune from any legal cause  
199 of action brought by any person or entity, including former  
200 employees, for the use of and reliance upon any incorrect  
201 information obtained from the employment verification system,  
202 including any incorrect information obtained as a result of an  
203 isolated, sporadic, or accidental technical or procedural

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204 failure, when determining final action on a person's work  
205 authorization status.

206 (b) For purposes of this subsection, compliance with  
207 subsection (2) creates a rebuttable presumption that an employer  
208 did not knowingly employ an unauthorized alien in violation of  
209 s. 448.09.

210 (4) RULEMAKING.—The department shall adopt rules to define  
211 an employment verification system, if any, that is substantially  
212 equivalent to or more effective than the E-Verify system with  
213 respect to identifying unauthorized aliens and those persons  
214 eligible to work in the United States. The rules must identify  
215 the types of databases, methodologies, and evidence of identity  
216 and employment eligibility that qualify an employment  
217 verification system as substantially equivalent to or more  
218 effective than the E-Verify system.

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