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

A bill to be entitled

An act relating to the verification of employment eligibility; creating s. 287.137, F.S.; defining terms; requiring public employers and certain contractors and subcontractors to register with and use an employment verification system by a specified date; prohibiting public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers with and uses an employment verification system; creating s. 448.093, F.S.; defining terms; requiring employers who meet specified criteria to register with and use an employment verification system to verify the employment eligibility of new employees; prescribing an implementation schedule for the employment verification requirement; authorizing the imposition of fines for violations of the act; requiring a violating employer to submit certain affidavits to the Department of Economic Opportunity; requiring the department to order the appropriate licensing agency to suspend an employer’s license under certain circumstances; providing civil immunity for an employer registered with and using an employment verification system; providing specified immunity and nonliability for an employer who complies in good faith with the requirements of the act; creating a rebuttable presumption for certain employers that the employer did not knowingly employ an unauthorized alien; requiring the department to define by rule
employment verification systems substantially equivalent to the E-Verify system; providing requirements for such rules; providing an effective date.

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

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

(b) “Employee” has the same meaning as provided in s. 448.093.

(c) “Employment verification system” has the same meaning as provided in s. 448.093.

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

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

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

(2) On or after July 1, 2022:
   (a) Every public employer, contractor, and subcontractor shall register with and use an employment verification system to verify the work authorization status of all new employees and identify whether an employee is an unauthorized alien.
   (b) A public employer or a contractor or subcontractor in this state may not enter into a contract under this section unless each party to the contract registers with and uses an employment verification system.

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

448.093 Definitions; use of employment verification system required for private employers; business licensing enforcement.— (1) DEFINITIONS.—As used in this section, the term:
   (a) “Agency” means an agency, a department, a board, or a commission of this state or a county, municipality, or town issuing a license to operate a business in this state.
   (b) “Department” means the Department of Economic Opportunity.
   (c) “Employee” means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds tax pursuant to the Federal Insurance Contributions Act (FICA) or federal income tax from the...
individual’s compensation, or whose employer issues an Internal Revenue Service W-2 form, but not an Internal Revenue Service Form 1099, to an individual for purposes of documenting compensation. The term does not include a licensed independent contractor as defined in federal laws or regulations.

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

  1. A government employer.

  2. The occupant or owner of a private residence who hires:
      a. Casual labor, as defined in s. 443.036, to be performed entirely within the private residence; or
      b. A licensed independent contractor, as defined in federal laws or regulations, to perform a specified portion of labor or services.

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

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

(e) “Employment verification system” means:
1. An Internet-based system operated by the United States Department of Homeland Security which allows participating employers to electronically verify the employment eligibility of newly hired employees; or
2. A substantially equivalent electronic employment verification system that is permissible under department rule.

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

(g) “License” means a franchise, a permit, a certificate, an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state. The term includes, but is not limited to:
1. An article of incorporation.
2. A certificate of partnership, a partnership registration, or an article of organization.
3. A grant of authority issued pursuant to state or federal law.
4. A transaction privilege tax license.

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

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

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

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

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

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

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

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

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

(3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY.—

(a) 1. An employer registered with and using an employment verification system may not be held civilly liable in a cause of action for the employer’s:
   a. Hiring of an unauthorized alien if the information obtained from the employment verification system indicated that the person’s work authorization status was not that of an unauthorized alien; or
   b. Refusal to hire a person if the information obtained from the employment verification system indicated that the person’s work authorization status was that of an unauthorized alien.

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

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

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

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