

**By** the Committees on Commerce and Tourism; and Judiciary; and Senators Lee, Gruters, Harrell, and Simmons

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1                                   A bill to be entitled  
2       An act relating to the verification of employment  
3       eligibility; amending s. 287.058, F.S.; requiring  
4       written agreements for the procurement of specified  
5       contractual services to include a statement regarding  
6       the requirement that a contractor or subcontractor  
7       register with and use an employment verification  
8       system; creating s. 287.137, F.S.; defining terms;  
9       requiring public employers and certain contractors and  
10      subcontractors to register with and use an employment  
11      verification system by a specified date; prohibiting  
12      public employers, contractors, and subcontractors from  
13      entering into a contract unless each party to the  
14      contract registers with and uses an employment  
15      verification system; creating s. 448.093, F.S.;  
16      defining terms; requiring employers who meet specified  
17      criteria to register with and use an employment  
18      verification system to verify the employment  
19      eligibility of new employees; prescribing an  
20      implementation schedule for the employment  
21      verification requirement; authorizing the imposition  
22      of fines for violations of the act; requiring a  
23      violating employer to submit certain affidavits to the  
24      Department of Economic Opportunity; requiring the  
25      department to order the appropriate licensing agency  
26      to suspend an employer's license under certain  
27      circumstances; providing civil immunity for an  
28      employer registered with and using an employment  
29      verification system; providing specified immunity and

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30 nonliability for an employer who complies in good  
31 faith with the requirements of the act; creating a  
32 rebuttable presumption for certain employers that the  
33 employer did not knowingly employ an unauthorized  
34 alien; requiring the department to define by rule  
35 employment verification systems substantially  
36 equivalent to the E-Verify system; providing  
37 requirements for such rules; providing an effective  
38 date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Subsection (1) of section 287.058, Florida  
43 Statutes, is amended to read:

44 287.058 Contract document.—

45 (1) Every procurement of contractual services in excess of  
46 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
47 except for the providing of health and mental health services or  
48 drugs in the examination, diagnosis, or treatment of sick or  
49 injured state employees or the providing of other benefits as  
50 required by chapter 440, shall be evidenced by a written  
51 agreement embodying all provisions and conditions of the  
52 procurement of such services, which shall, where applicable,  
53 include, but not be limited to, a provision:

54 (a) That bills for fees or other compensation for services  
55 or expenses be submitted in detail sufficient for a proper  
56 preaudit and postaudit thereof.

57 (b) That bills for any travel expenses be submitted in  
58 accordance with s. 112.061. A state agency may establish rates

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59 lower than the maximum provided in s. 112.061.

60 (c) Allowing unilateral cancellation by the agency for  
61 refusal by the contractor to allow public access to all  
62 documents, papers, letters, or other material made or received  
63 by the contractor in conjunction with the contract, unless the  
64 records are exempt from s. 24(a) of Art. I of the State  
65 Constitution and s. 119.07(1).

66 (d) Specifying a scope of work that clearly establishes all  
67 tasks the contractor is required to perform.

68 (e) Dividing the contract into quantifiable, measurable,  
69 and verifiable units of deliverables that must be received and  
70 accepted in writing by the contract manager before payment. Each  
71 deliverable must be directly related to the scope of work and  
72 specify a performance measure. As used in this paragraph, the  
73 term "performance measure" means the required minimum acceptable  
74 level of service to be performed and criteria for evaluating the  
75 successful completion of each deliverable.

76 (f) Specifying the criteria and the final date by which  
77 such criteria must be met for completion of the contract.

78 (g) Specifying that the contract may be renewed for a  
79 period that may not exceed 3 years or the term of the original  
80 contract, whichever is longer, specifying the renewal price for  
81 the contractual service as set forth in the bid, proposal, or  
82 reply, specifying that costs for the renewal may not be charged,  
83 and specifying that renewals are contingent upon satisfactory  
84 performance evaluations by the agency and subject to the  
85 availability of funds. Exceptional purchase contracts pursuant  
86 to s. 287.057(3) (a) and (c) may not be renewed.

87 (h) Specifying the financial consequences that the agency

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88 must apply if the contractor fails to perform in accordance with  
89 the contract.

90 (i) Addressing the property rights of any intellectual  
91 property related to the contract and the specific rights of the  
92 state regarding the intellectual property if the contractor  
93 fails to provide the services or is no longer providing  
94 services.

95 (j) Requiring a contractor or any subcontractor performing  
96 a portion of the contract to register with and use an employment  
97 verification system to the extent required by s. 287.137 for all  
98 new employees hired in this state during the term of the  
99 contract.

100

101 In lieu of a written agreement, the agency may authorize the use  
102 of a purchase order for classes of contractual services if the  
103 provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the  
104 purchase order or solicitation. The purchase order must include,  
105 but need not be limited to, an adequate description of the  
106 services, the contract period, and the method of payment. In  
107 lieu of printing the provisions of paragraphs (a)-(c) and (g) in  
108 the contract document or purchase order, agencies may  
109 incorporate the requirements of paragraphs (a)-(c) and (g) by  
110 reference.

111 Section 2. Section 287.137, Florida Statutes, is created to  
112 read:

113 287.137 Verification of work authorization status; public  
114 employers.-

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

116 (a) "Contractor" means a person or an entity that has more

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117 than 10 employees in this state and has entered into, or is  
118 attempting to enter into, a contract with a public employer to  
119 provide labor, supplies, or services to such employer.

120 (b) "Employee" has the same meaning as provided in s.  
121 448.093.

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

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

129 (e) "Subcontractor" means a person or an entity that has  
130 more than 10 employees in this state and provides labor,  
131 supplies, or services to or for a contractor or another  
132 subcontractor pursuant to a contract that will, or is expected  
133 to, exceed the CATEGORY TWO threshold amount provided in s.  
134 287.017.

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

140 (2) On or after July 1, 2021:

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

145 (b) A public employer or a contractor or subcontractor in

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146 this state may not enter into a contract under this section  
147 unless each party to the contract registers with and uses an  
148 employment verification system.

149 Section 3. Section 448.093, Florida Statutes, is created to  
150 read:

151 448.093 Definitions; use of employment verification system  
152 required for private employers; business licensing enforcement.-

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

154 (a) "Agency" means an agency, a department, a board, or a  
155 commission of this state or a county or municipality which  
156 issues a license to operate a business in this state.

157 (b) "Department" means the Department of Economic  
158 Opportunity.

159 (c) "Employee" means an individual whose work is performed  
160 under the direction and supervision of the employer and whose  
161 employer withholds tax pursuant to the Federal Insurance  
162 Contributions Act (FICA) or federal income tax from the  
163 individual's compensation, or whose employer issues an Internal  
164 Revenue Service W-2 form, but not an Internal Revenue Service  
165 Form 1099, to an individual for purposes of documenting  
166 compensation. The term does not include a licensed independent  
167 contractor as defined in federal laws or regulations.

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

170 1. A government employer.

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

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

174 b. A licensed independent contractor, as defined in federal

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175 laws or regulations, to perform a specified portion of labor or  
176 services.

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

183 (e) "Employment verification system" means:

184 1. An Internet-based system operated by the United States  
185 Department of Homeland Security which allows participating  
186 employers to electronically verify the employment eligibility of  
187 newly hired employees;

188 2. A system to verify whether an employee is an  
189 unauthorized alien that an employer certifies, under penalty of  
190 perjury, on a form provided by the department as a substantially  
191 equivalent electronic employment verification system to that  
192 specified in subparagraph 1.; or

193 3. A system that complies with 8 U.S.C. 1324a and the  
194 employer maintains complete copies of all records used to  
195 establish an employee's identity and employment authorization  
196 for at least 3 years after the employer receives the records or  
197 1 year after the employee ceases to provide services to the  
198 employer, whichever is later.

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

203 (g) "License" means a franchise, a permit, a certificate,

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204 an approval, a registration, a charter, or any similar form of  
205 authorization required by state law and issued by an agency for  
206 the purpose of operating a business in this state. The term  
207 includes, but is not limited to:

208 1. An article of incorporation.

209 2. A certificate of partnership, a partnership  
210 registration, or an article of organization.

211 3. A grant of authority issued pursuant to state or federal  
212 law.

213 4. A transaction privilege tax license.

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

219 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; FINE FOR  
220 VIOLATION; SUSPENSION OF BUSINESS LICENSE.-

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

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

231 1. Employers having at least 500 employees in this state  
232 must use an employment verification system beginning January 1,



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233 2021.

234 2. Employers having at least 100 employees in this state  
235 must use an employment verification system beginning July 1,  
236 2021.

237 3. Employers having at least 20 employees in this state  
238 must use an employment verification system beginning January 1,  
239 2022.

240 (c) If an employer does not register with an employment  
241 verification system, the department may impose a fine of up to  
242 \$500 on the employer, who must then register with an employment  
243 verification system and provide an affidavit stating such fact  
244 to the department within 30 days. If the employer does not  
245 register with and provide the required affidavit within 30 days  
246 after the imposition of the fine becomes final, the department  
247 must order the appropriate agency to suspend all applicable  
248 licenses held by the employer until the employer registers with  
249 an employment verification system and provides the department  
250 with the required affidavit.

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

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

255 a. Hiring of an unauthorized alien if the information  
256 obtained from the employment verification system indicated that  
257 the person's work authorization status was not that of an  
258 unauthorized alien; or

259 b. Refusal to hire a person if the information obtained  
260 from the employment verification system indicated that the  
261 person's work authorization status was that of an unauthorized

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262 alien.

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

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

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

287 Section 4. This act shall take effect July 1, 2020.