

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

595-04469-20

2020664c3

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 E-Verify; creating s. 287.137,
8 F.S.; defining terms; requiring public employers and
9 certain contractors and subcontractors to register
10 with and use E-Verify by a specified date; prohibiting
11 public employers, contractors, and subcontractors from
12 entering into a contract unless each party to the
13 contract registers with and uses E-Verify; creating s.
14 448.093, F.S.; defining terms; requiring employers who
15 meet specified criteria to register with and use an
16 electronic employment verification system to verify
17 the employment eligibility of new employees; requiring
18 employers who employ more than a specified number of
19 employees to use an electronic employment verification
20 system by a certain date; authorizing certain
21 employers to use an alternative system that meets
22 specified criteria to confirm an employee's identity,
23 subject to certain requirements; authorizing the
24 Department of Economic Opportunity to conduct random
25 audits of employment files of certain employers;
26 requiring the department to take certain action
27 against a noncompliant employer; requiring the
28 appropriate licensing agency to suspend a noncompliant
29 employer's license until certain conditions are met;

595-04469-20

2020664c3

30 authorizing the imposition of fines for violations of
31 the act; prohibiting an employer from knowingly
32 employing an unauthorized alien; providing civil
33 immunity for an employer registered with and using an
34 electronic employment verification system; providing
35 specified immunity and nonliability for an employer
36 who complies in good faith with the requirements of
37 the act; creating a rebuttable presumption for certain
38 employers that the employer did not knowingly employ
39 an unauthorized alien; authorizing certain persons
40 with knowledge of a violation to file a complaint with
41 the department, subject to certain limitations;
42 providing a penalty for persons who knowingly file
43 false or frivolous complaints; prescribing procedures
44 for the disposition of such complaints; requiring the
45 department to notify the Federal Government of the
46 identity of an unauthorized alien; requiring the
47 department to define by rule electronic employment
48 verification systems substantially equivalent to the
49 E-Verify system; providing requirements for such
50 rules; authorizing the department to adopt additional
51 rules in administering the act; providing for
52 severability; providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Subsection (1) of section 287.058, Florida
57 Statutes, is amended to read:

58 287.058 Contract document.-

595-04469-20

2020664c3

59 (1) Every procurement of contractual services in excess of
60 the threshold amount provided in s. 287.017 for CATEGORY TWO,
61 except for the providing of health and mental health services or
62 drugs in the examination, diagnosis, or treatment of sick or
63 injured state employees or the providing of other benefits as
64 required by chapter 440, shall be evidenced by a written
65 agreement embodying all provisions and conditions of the
66 procurement of such services, which shall, where applicable,
67 include, but not be limited to, a provision:

68 (a) That bills for fees or other compensation for services
69 or expenses be submitted in detail sufficient for a proper
70 preaudit and postaudit thereof.

71 (b) That bills for any travel expenses be submitted in
72 accordance with s. 112.061. A state agency may establish rates
73 lower than the maximum provided in s. 112.061.

74 (c) Allowing unilateral cancellation by the agency for
75 refusal by the contractor to allow public access to all
76 documents, papers, letters, or other material made or received
77 by the contractor in conjunction with the contract, unless the
78 records are exempt from s. 24(a) of Art. I of the State
79 Constitution and s. 119.07(1).

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

82 (e) Dividing the contract into quantifiable, measurable,
83 and verifiable units of deliverables that must be received and
84 accepted in writing by the contract manager before payment. Each
85 deliverable must be directly related to the scope of work and
86 specify a performance measure. As used in this paragraph, the
87 term "performance measure" means the required minimum acceptable

595-04469-20

2020664c3

88 level of service to be performed and criteria for evaluating the
89 successful completion of each deliverable.

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

92 (g) Specifying that the contract may be renewed for a
93 period that may not exceed 3 years or the term of the original
94 contract, whichever is longer, specifying the renewal price for
95 the contractual service as set forth in the bid, proposal, or
96 reply, specifying that costs for the renewal may not be charged,
97 and specifying that renewals are contingent upon satisfactory
98 performance evaluations by the agency and subject to the
99 availability of funds. Exceptional purchase contracts pursuant
100 to s. 287.057(3) (a) and (c) may not be renewed.

101 (h) Specifying the financial consequences that the agency
102 must apply if the contractor fails to perform in accordance with
103 the contract.

104 (i) Addressing the property rights of any intellectual
105 property related to the contract and the specific rights of the
106 state regarding the intellectual property if the contractor
107 fails to provide the services or is no longer providing
108 services.

109 (j) Requiring a contractor or any subcontractor performing
110 a portion of the contract to register with and use E-Verify to
111 the extent required by s. 287.137 for all new employees hired in
112 this state during the term of the contract.

113
114 In lieu of a written agreement, the agency may authorize the use
115 of a purchase order for classes of contractual services if the
116 provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the

595-04469-20

2020664c3

117 purchase order or solicitation. The purchase order must include,
118 but need not be limited to, an adequate description of the
119 services, the contract period, and the method of payment. In
120 lieu of printing the provisions of paragraphs (a)-(c) and (g) in
121 the contract document or purchase order, agencies may
122 incorporate the requirements of paragraphs (a)-(c) and (g) by
123 reference.

124 Section 2. Section 287.137, Florida Statutes, is created to
125 read:

126 287.137 Verification of work authorization status; public
127 employers.-

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

129 (a) "Contractor" means a person or an entity that has more
130 than 10 employees in this state and has entered into, or is
131 attempting to enter into, a contract with a public employer to
132 provide labor, supplies, or services to such employer.

133 (b) "Employee" has the same meaning as provided in s.
134 448.093.

135 (c) "E-verify" means the Internet-based electronic
136 employment verification system operated by the United States
137 Department of Homeland Security.

138 (d) "Public employer" means an agency or a subdivision of
139 the state, regional, county, local, special district, or
140 municipal government, whether executive, judicial, or
141 legislative, or any public school, community college, or state
142 university, which employs persons who perform labor or services
143 for that employer in exchange for salary, wages, or other
144 remuneration or enters into, or attempts to enter into, a
145 contract with a contractor for an amount that will, or is

595-04469-20

2020664c3

146 expected to, exceed the CATEGORY TWO threshold amount provided
147 in s. 287.017.

148 (e) "Subcontractor" means a person or an entity that has
149 more than 10 employees in this state and provides labor,
150 supplies, or services to or for a contractor or another
151 subcontractor pursuant to a contract that will, or is expected
152 to, exceed the CATEGORY TWO threshold amount provided in s.
153 287.017.

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

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

160 (a) Every public employer, contractor, and subcontractor
161 shall register with and use E-Verify to verify the work
162 authorization status of all new employees and identify whether
163 an employee is an unauthorized alien.

164 (b) A public employer or a contractor or subcontractor in
165 this state may not enter into a contract under this section
166 unless each party to the contract registers with and uses E-
167 Verify.

168 Section 3. Section 448.093, Florida Statutes, is created to
169 read:

170 448.093 Definitions; use of electronic employment
171 verification system required for private employers; business
172 licensing enforcement.-

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

174 (a) "Agency" means an agency, a department, a board, or a

595-04469-20

2020664c3

175 commission of this state or a county or municipality which
176 issues a license to operate a business in this state.

177 (b) "Department" means the Department of Economic
178 Opportunity.

179 (c) "Electronic employment verification system" means:

180 1. An Internet-based system operated by the United States
181 Department of Homeland Security (E-Verify) which allows
182 participating employers to electronically verify the employment
183 eligibility of newly hired employees; or

184 2. A system substantially equivalent to E-Verify which
185 verifies whether an employee is an unauthorized alien as
186 certified by an employer, under penalty of perjury, on a form
187 provided by the department.

188 (d) "Employee" means an individual whose work is performed
189 under the direction and supervision of the employer and whose
190 employer withholds tax pursuant to the Federal Insurance
191 Contributions Act (FICA) or federal income tax from the
192 individual's compensation, or whose employer issues an Internal
193 Revenue Service W-2 form, but not an Internal Revenue Service
194 Form 1099, to an individual for purposes of documenting
195 compensation. The term includes all individuals or entities that
196 do not meet the definition of an independent contractor under
197 federal laws or regulations to perform a specified portion of
198 labor or services.

199 (e) "Employer" means a person or an entity in this state
200 which employs an employee. The term does not include any of the
201 following:

202 1. A government employer.

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

595-04469-20

2020664c3

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

206 b. A licensed independent contractor, as defined in federal
207 laws or regulations, to perform a specified portion of labor or
208 services.

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

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

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

224 1. An article of incorporation.

225 2. A certificate of partnership, a partnership
226 registration, or an article of organization.

227 3. A grant of authority issued pursuant to state or federal
228 law.

229 4. A transaction privilege tax license.

230 (h) "Unauthorized alien" means a person who is not
231 authorized under federal law to be employed in the United
232 States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall

595-04469-20

2020664c3

233 be interpreted consistently with that section and any applicable
234 federal rules or regulations.

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

237 (a) An employer shall, after making an offer of employment
238 which has been accepted by an individual, use an electronic
239 employment verification system to verify such individual's
240 employment eligibility. Verification must occur within the
241 period stipulated by applicable federal rules or regulations.
242 However, an employer is not required to verify the employment
243 eligibility of a continuing employee hired before the date of
244 the employer's registration with an electronic employment
245 verification system.

246 (b) Employers having at least 50 employees in this state
247 must use an electronic employment verification system or
248 otherwise be in compliance with this section by no later than
249 January 1, 2021.

250 (c) As an alternative to registering with an electronic
251 employment verification system, employers having fewer than 50
252 employees may operate a system that complies with 8 U.S.C. s.
253 1324a, and must also maintain complete copies of all records
254 used to establish an employee's identity and employment
255 authorization for at least 3 years after the employer receives
256 the records or 1 year after the employee ceases to provide
257 services to the employer, whichever is later.

258 1. Copies of all records maintained by employers pursuant
259 to this paragraph or paragraph (b) must be provided to any state
260 or federal government agency upon request.

261 2. Beginning January 1, 2021, the department may conduct

595-04469-20

2020664c3

262 random audits of employment files of those employers that do not
263 register with the E-Verify system.

264 (d) If an employer does not register with an electronic
265 employment verification system or otherwise comply with the
266 requirements of paragraph (c), the department must submit a
267 notice of violation to the employer, who must then register with
268 an electronic employment verification system or otherwise comply
269 with paragraph (c) and provide an affidavit stating such fact to
270 the department within 30 calendar days after the notice of
271 violation is mailed. If the employer does not become compliant
272 and provide the required affidavit within 30 calendar days
273 following the mailing of the notice of violation, the
274 appropriate licensing agency must suspend all applicable
275 licenses held by the employer until the employer becomes
276 compliant and provides the department with the required
277 affidavit.

278 (e) If the department determines that an employer has not
279 registered with an electronic employment verification system or
280 complied with the requirements of paragraph (c), the department
281 may impose a fine of up to \$500 per violation of this
282 subsection.

283 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY;
284 COMPLAINTS.—

285 (a) An employer may not knowingly employ an unauthorized
286 alien.

287 (b) An employer registered with and using an electronic
288 employment verification system may not be held civilly liable in
289 a cause of action for the employer's:

290 1. Hiring of an unauthorized alien if the information

595-04469-20

2020664c3

291 obtained from the electronic employment verification system
292 indicated that the person's work authorization status was not
293 that of an unauthorized alien; or

294 2. Refusal to employ a person if the information obtained
295 from the electronic employment verification system indicated
296 that the person's work authorization status was that of an
297 unauthorized alien.

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

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

313 (e) A person who has a good faith belief that an employer
314 knowingly employs, or has knowingly employed within the last 90
315 calendar days, an unauthorized alien may file a complaint with
316 the department.

317 1. A complaint may not be based on race, color, or national
318 origin, pursuant to state or federal law.

319 2. A person who knowingly files a false or frivolous

595-04469-20

2020664c3

320 complaint under this subsection commits a misdemeanor of the
321 second degree, punishable as provided in s. 775.082 or s.
322 775.083.

323 (f) Upon receipt of a valid complaint substantiated by
324 evidence of a violation of paragraph (a), the department must
325 notify the employer of the complaint and direct the employer to
326 notify any employees named in the complaint. The department
327 shall also determine whether the employer is registered with an
328 electronic employment verification system or otherwise compliant
329 with the requirements of paragraph (2)(c).

330 (g) The department shall request that the Federal
331 Government verify, pursuant to 8 U.S.C. s. 1373(c), the
332 citizenship or immigration status of any employee named in the
333 complaint, and the department must rely upon such verification.
334 The department may not independently make a final determination
335 as to whether an employee is an unauthorized alien.

336 (h) Upon finding that an employer has violated paragraph
337 (a), the department must notify the United States Immigration
338 and Customs Enforcement Agency of the identity of the
339 unauthorized alien and, if known, the physical address at which
340 the unauthorized alien resides.

341 (4) RULEMAKING.—

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

595-04469-20

2020664c3

349 employment verification system as substantially equivalent to or
350 more effective than the E-Verify system.

351 (b) The department may adopt rules to:

352 1. Specify the manner of notifying licensing agencies,
353 pursuant to paragraph (2) (d), of violations by employers;

354 2. Govern the administration of fines authorized under
355 paragraph (2) (e); and

356 3. Provide for procedures for complaints filed pursuant to
357 subsection (3).

358 Section 4. If any provision of this act or its application
359 to any person or circumstance is held invalid, the invalidity
360 does not affect other provisions or applications of the act
361 which can be given effect without the invalid provision or
362 application, and to this end the provisions of this act are
363 severable.

364 Section 5. This act shall take effect July 1, 2020.