

By the Committees on Judiciary; and Judiciary

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1 A bill to be entitled
2 An act relating to unauthorized immigrants; directing
3 the Division of Statutory Revision to designate
4 specified new statutory sections as part III of ch.
5 448, F.S., and name the part "Unauthorized
6 Immigrants"; creating s. 448.30, F.S.; defining terms;
7 creating s. 448.31, F.S.; requiring every employer to
8 use the federal program for electronic verification of
9 employment eligibility in order to verify the
10 employment eligibility of each employee hired on or
11 after a specified date; providing an exception for
12 employers who request and receive from the employee
13 certain driver's licenses or identification cards;
14 requiring the employers to check the documents using
15 authentication technology; directing the Department of
16 Highway Safety and Motor Vehicles to post information
17 on the website of the department relating to
18 compliance by states with the federal REAL ID Act of
19 2005; directing the department to adopt rules relating
20 to authentication technology; providing that an
21 employer who does not comply with the employment
22 requirements is subject to the suspension of any
23 license held by the employer; providing that an
24 employer is not liable for terminating an employee
25 under certain conditions; providing legislative intent
26 for law enforcement and criminal justice agencies to
27 coordinate with the Federal Government on the
28 identification of unauthorized immigrants and
29 enforcement of immigration laws; authorizing the

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30 Department of Corrections and the Department of Law
31 Enforcement to pursue agreements with the United
32 States Department of Homeland Security for the
33 training of certain personnel related to the
34 enforcement of immigration laws; requiring reports on
35 activity under the agreements; providing that sheriffs
36 may evaluate the feasibility of entering into such
37 agreements; directing certain agencies having custody
38 of individuals convicted of dangerous crimes to make
39 reasonable efforts to determine whether the
40 individuals are present in the United States lawfully;
41 requiring arresting agencies to adopt rules relating
42 to this requirement and authorizing the agencies to
43 enter into agreements with Immigration and Customs
44 Enforcement; providing for a presumption as to risk of
45 flight in order to avoid prosecution; creating s.
46 945.80, F.S.; requiring the Department of Corrections
47 to release nonviolent inmates to the custody of the
48 United States Immigration and Customs Enforcement
49 under certain circumstances; requiring the department
50 to identify inmates who are eligible for removal and
51 deportation; establishing certain procedures for the
52 transfer of an inmate to federal custody; providing
53 for a released inmate to serve the remainder of his or
54 her sentence upon unlawfully returning to the United
55 States; authorizing the secretary of the department to
56 enter into an agreement with the United States
57 Department of Homeland Security regarding the rapid
58 repatriation of removable custodial aliens; requiring

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59 the department to compile statistics; providing for
60 applicability; providing legislative findings related
61 to costs incurred by the state from unauthorized
62 immigration; requiring the Agency for Workforce
63 Innovation to prepare a report quantifying the costs;
64 requiring the director of the agency to submit to the
65 Federal Government a request for reimbursement of the
66 costs or a reduction in moneys owed to the Federal
67 Government as a result of borrowing to fund
68 unemployment compensation claims; providing an
69 effective date.

70
71 WHEREAS, under federal immigration law, employers must
72 verify the identity and employment authorization of each person
73 they hire, and

74 WHEREAS, in verifying the identity and employment
75 authorization of new employees, employers must complete the
76 federal Form I-9, and

77 WHEREAS, to improve the accuracy of this process, the
78 Federal Government operates an electronic employment
79 verification system called E-Verify, and

80 WHEREAS, requiring employers to use E-Verify for each new
81 employee will promote the state's interest in ensuring that only
82 those who are authorized to work in the United States are
83 employed in this state, and

84 WHEREAS, one of the recognized shortcomings of the E-Verify
85 Program is the fact that unauthorized workers may attempt to
86 obtain employment by committing identity fraud not detected by
87 the E-Verify Program, and

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88 WHEREAS, authentication equipment and software will help
89 employers detect fraudulent driver's licenses or identification
90 cards, and

91 WHEREAS, requiring employers to employ such equipment and
92 software in the case of each new employee, as an alternative to
93 registering with the E-Verify Program, will enhance the process
94 of verifying identity and combating fraud, and

95 WHEREAS, the rapid removal and deportation of nonviolent
96 criminal aliens who are in the state prison system will reduce
97 fiscal costs for the state and promote public safety, and

98 WHEREAS, it is in the best interests of the state to seek
99 reimbursement or other financial remuneration from the Federal
100 Government for costs incurred by the state related to
101 unauthorized immigration, NOW, THEREFORE,

102

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

104

105 Section 1. The Division of Statutory Revision shall
106 designate ss. 448.30 and 448.31, Florida Statutes, as created by
107 this act, as part III of chapter 448, Florida Statutes, titled
108 "UNAUTHORIZED IMMIGRANTS."

109 Section 2. Section 448.30, Florida Statutes, is created to
110 read:

111 448.30 Definitions.—As used in this part, the term:

112 (1) "Agency" means a department, board, bureau, district,
113 commission, authority, or other similar body of this state or a
114 county, municipality, special district, or other political
115 subdivision of this state which issues a license for purposes of
116 operating a business in this state or in any jurisdiction within

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117 this state.

118 (2) "Employee" means any person, other than an independent
119 contractor, who, for consideration, provides labor or services
120 to an employer in this state.

121 (3) "Employer" means a person or agency that employs one or
122 more employees in this state. In the case of an independent
123 contractor, the term means the independent contractor and does
124 not mean the person or agency that uses the contract labor. The
125 term does not include an employee leasing company licensed
126 pursuant to part IX of chapter 468 which enters into a written
127 agreement or understanding with its client company which places
128 the primary obligation for compliance with this part upon its
129 client company. In the absence of a written agreement or
130 understanding, the contracting party, whether the licensed
131 employee leasing company or client company that initially hires
132 the leased employee, is responsible for the obligations set
133 forth in this part. Such employee leasing company shall, at all
134 times, remain an employer as otherwise specified by law.

135 (4) "E-Verify Program" means the program for electronic
136 verification of employment eligibility which is operated by the
137 United States Department of Homeland Security, or any successor
138 program.

139 (5) "Independent contractor" means a person that carries on
140 an independent business, contracts to do a piece of work
141 according to its own means and methods, and is subject to
142 control only as to results.

143 (6) "License" means any license, permit, certificate,
144 approval, registration, charter, or similar form of
145 authorization that is required by law and issued by any agency

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146 for the purpose of operating a business in this state. The term
147 includes, but is not limited to, articles of incorporation, a
148 certificate of partnership, a partnership registration, articles
149 of organization, and a transaction privilege tax license.

150 Section 3. Section 448.31, Florida Statutes, is created to
151 read:

152 448.31 Verification of employment eligibility.-

153 (1) An employer who hires a new employee on or after July
154 1, 2012, shall:

155 (a) Register with the E-Verify Program; use the program for
156 all new hires, both United States citizens and noncitizens; and
157 not use the program selectively;

158 (b) Upon acceptance on or after that date of an offer of
159 employment by the new employee, verify the employment
160 eligibility of the employee through, and in accordance with the
161 time periods and other requirements of, the E-Verify Program;
162 and

163 (c) Maintain a record of the verification for 3 years after
164 the date of hire or 1 year after the date employment ends,
165 whichever is longer.

166 (2) (a) An employer who hires a new employee on or after
167 July 1, 2012, is exempt from the requirements of subsection (1)
168 if the employer:

169 1. Requests and receives from the employee a valid driver's
170 license or identification card that is issued by a state or
171 outlying possession of the United States and that complies with
172 the federal REAL ID Act of 2005 and the final rule promulgated
173 by the United States Department of Homeland Security
174 implementing that act;

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175 2. Within 3 business days after the first day of work,
176 swipes the common machine-readable zone on the driver's license
177 or card using the highest standard of authentication equipment
178 and software to:

179 a. To determine that the document is not fraudulent; and

180 b. Verify the physical description and other personal
181 identifying information of the employee who presents the
182 document against the data contained on the machine-readable
183 zone;

184 3. Maintains, for 3 years after the date of hire or 1 year
185 after the date employment ends, whichever is longer, a printed
186 record of the results of the authentication conducted under this
187 subsection and a photocopy of the document the employee
188 presented. The employer shall retain the record and the
189 photocopy with the federal Form I-9; and

190 4. Complies with the requirements of this subsection for
191 every new employee, both United States citizens and noncitizens,
192 unless and until the employer registers with the E-Verify
193 Program, and does not implement the requirements of this
194 subsection selectively.

195 (b) The Department of Highway Safety and Motor Vehicles
196 shall:

197 1. Maintain on the website for the department a list of all
198 states and outlying possessions of the United States which
199 comply with the federal REAL ID Act of 2005 and the final rule
200 promulgated by the United States Department of Homeland Security
201 implementing that act. For each state or possession, the
202 department shall specify the type of document that is in
203 compliance and the date on which the state or possession began

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204 issuing the document that is in compliance.

205 2. Adopt rules pursuant to ss. 120.536(1) and 120.54
206 prescribing standards and requirements for the equipment and
207 software used under paragraph (a).

208 (c) The procedures of this subsection are authorized for
209 the purpose of authenticating a driver's license or
210 identification card presented by a new employee, combating
211 fraud, and matching identifying information for the employee
212 against the document. An employer may not use the procedures to
213 discriminate on the basis of national origin or citizenship
214 status, except against a person who is not authorized to work in
215 the United States. Unless otherwise authorized by law, an
216 employer may not use information obtained through these
217 procedures for any purpose unrelated to verifying the identity
218 and employment authorization of a new employee.

219 (3) An employer who fails to comply with this section is
220 subject to the suspension of any license held by the employer
221 through the period of noncompliance. The suspension of a license
222 pursuant to this subsection by:

223 (a) An agency subject to chapter 120 must comply with the
224 provisions of s. 120.60(5).

225 (b) An agency not subject to chapter 120 must comply with
226 procedures substantially similar to the provisions of s.
227 120.60(5).

228 (4) An employer is not liable for wrongful termination if
229 the employer terminates an employee:

230 (a) In accordance with federal regulations upon a final
231 determination of ineligibility for employment through the E-
232 Verify Program; or

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233 (b) After complying with subsection (2) and reasonably
234 concluding that the employee presented a fraudulent document or
235 that the physical description or other personal identifying
236 information of the employee who presents the document does not
237 match the data contained on the machine-readable zone.

238 Section 4. Law enforcement and criminal justice agency
239 coordination with Federal Government on unauthorized
240 immigration.-

241 (1) LEGISLATIVE INTENT.-It is the intent of the Legislature
242 that law enforcement and criminal justice agencies in this state
243 work cooperatively with the Federal Government in the
244 identification of unauthorized immigrants and the enforcement of
245 immigration laws. It further is the intent of the Legislature to
246 maximize opportunities to transfer responsibility for the
247 custody and detention of unauthorized immigrants who are accused
248 or convicted of crimes from state and local governments to the
249 Federal Government in order to ensure the safety of the
250 residents of this state and to reduce costs to the criminal
251 justice system, while also protecting the due process rights of
252 individuals accused or convicted of crimes.

253 (2) DELEGATED ENFORCEMENT AUTHORITY.-

254 (a)1. The Department of Corrections may request from the
255 United States Department of Homeland Security approval to enter
256 into a memorandum of agreement to have employees or contractors
257 of the Department of Corrections trained by the Department of
258 Homeland Security as jail enforcement officers under s. 287(g) of
259 the federal Immigration and Nationality Act. The Department of
260 Corrections shall perform all actions reasonably necessary to
261 meet its obligations under the agreement.

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262 2. The Department of Corrections shall report by November
263 1, 2011, to the Governor, the President of the Senate, and the
264 Speaker of the House of Representatives on the status of
265 implementation of this paragraph. If the department has not
266 entered into a memorandum of agreement with the Department of
267 Homeland Security by that date, the department shall identify in
268 the report any barriers to full implementation of this
269 paragraph.

270 3. By February 1 of each year, the Department of
271 Corrections shall report to the Governor, the President of the
272 Senate, and the Speaker of the House of Representatives on the
273 enforcement activities conducted under this paragraph,
274 including, but not limited to, the number of inmates identified
275 as being unauthorized immigrants, placed in federal custody, or
276 deported.

277 (b)1. The Department of Law Enforcement may request from
278 the United States Department of Homeland Security approval to
279 enter into a memorandum of agreement to have employees of the
280 Department of Law Enforcement trained by the Department of
281 Homeland Security as task force officers under s. 287(g) of the
282 federal Immigration and Nationality Act. The Department of Law
283 Enforcement shall perform all actions reasonably necessary to
284 meet its obligations under the agreement.

285 2. By February 1 of each year, the Department of Law
286 Enforcement shall report to the Governor, the President of the
287 Senate, and the Speaker of the House of Representatives on the
288 enforcement activities conducted under this paragraph.

289 (c)1. The sheriff of each county may evaluate the
290 feasibility of entering into a memorandum of agreement with the

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291 United States Department of Homeland Security to have employees
292 of the sheriff trained by the Department of Homeland Security as
293 jail enforcement officers or task force officers under s. 287(g)
294 of the federal Immigration and Nationality Act. The Department
295 of Law Enforcement, upon request by a sheriff, shall share
296 information on the department's agreement with the United States
297 Department of Homeland Security and experience in operating
298 under the agreement.

299 2. The sheriff shall consider, at a minimum:

300 a. The potential fiscal impact on the office of the
301 sheriff;

302 b. The potential impact on the workload and personnel needs
303 of the office; and

304 c. The estimated presence of unauthorized immigrants in the
305 geographic area served by the sheriff.

306 3. If the sheriff determines that entering into an
307 agreement is feasible, the sheriff may make an initial request
308 for an agreement to the Department of Homeland Security. This
309 paragraph does not compel the sheriff to execute an agreement.

310 (3) IDENTIFICATION UPON CONVICTION.—

311 (a) When a person is confined in a jail, prison, or other
312 criminal detention facility after a conviction for a dangerous
313 crime as listed in s. 907.041(4)(a), Florida Statutes, the
314 agency having custody of that person shall make a reasonable
315 effort to determine the nationality of the person and whether
316 the person is present in the United States lawfully, including,
317 but not limited to, the submission of fingerprints pursuant to
318 the agreement under paragraph (b). If the holding agency
319 establishes, independent of the submission of fingerprints, that

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320 the person is not lawfully present in the United States, the
321 agency shall notify the United States Department of Homeland
322 Security.

323 (b) The arresting agency shall adopt rules as are
324 reasonably necessary and appropriate for, and not inconsistent
325 with, the proper administration and enforcement of the
326 provisions of this subsection, and may enter into an agreement
327 with Immigration and Customs Enforcement which is not
328 inconsistent with this section and is incident to carrying out
329 its provisions.

330 (c) This subsection may not be construed to deny a person
331 bond or to prevent release of a person from confinement if the
332 person is otherwise eligible for release. However, for the
333 purpose of the bail determination required by s. 903.046,
334 Florida Statutes, a determination that the person is not
335 lawfully present in the United States raises a rebuttable
336 presumption that there is a risk of flight to avoid prosecution.

337 Section 5. Section 945.80, Florida Statutes, is created to
338 read:

339 945.80 Removal and deportation of criminal aliens.—

340 (1) Notwithstanding any law to the contrary, and pursuant
341 to s. 241(a)(4)(B)(ii) of the federal Immigration and
342 Nationality Act, the secretary of the department shall release a
343 prisoner to the custody and control of the United States
344 Immigration and Customs Enforcement if:

345 (a) The prisoner was convicted of a nonviolent offense;

346 (b) The department has received a final order of removal
347 for the prisoner from the United States Immigration and Customs
348 Enforcement; and

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349 (c) The secretary determines that removal is appropriate
350 and in the best interest of the state.

351
352 A person is ineligible for release under this section if he or
353 she would be ineligible for control release under s.
354 947.146(3)(a)-(m).

355 (2)(a) The department shall identify, during the inmate-
356 reception process and among the existing inmate population,
357 prisoners who are eligible for removal under this section and
358 determine whether removal is appropriate and in the best
359 interest of the state.

360 (b) The department shall coordinate with federal
361 authorities to determine the eligibility of a prisoner for
362 removal and to obtain a final order of removal.

363 (3) Upon approval for removal of the prisoner under this
364 section, the department shall establish a release date for the
365 prisoner to be transferred to federal custody. The department
366 shall maintain exclusive control of and responsibility for the
367 custody and transportation of the prisoner until the prisoner is
368 physically transferred to federal custody.

369 (4)(a) If a prisoner who is released under this section
370 returns unlawfully to the United States, upon notice from any
371 state or federal law enforcement agency that the prisoner is
372 incarcerated, the secretary shall revoke the release of the
373 prisoner and seek the return of the prisoner to the custody of
374 the department in order to serve the remainder of the sentence
375 imposed by the court. The prisoner is not eligible for probation
376 or community control with respect to any sentence affected by
377 the release under this section.

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378 (b) The department shall notify each prisoner who is
379 eligible for removal of the provisions of this subsection.

380 (5) The secretary of the department may enter into an
381 agreement with the United States Department of Homeland Security
382 regarding the rapid repatriation of removable custodial aliens
383 from the United States pursuant to this section.

384 (6) The department shall compile statistics on
385 implementation of this section, including, but not limited to:

386 (a) The number of prisoners who are transferred to federal
387 custody;

388 (b) The number of prisoners who reenter the United States;
389 and

390 (c) The annual cost-avoidance achieved.

391 (7) To the extent practicable, this section applies to all
392 prisoners actually in confinement on, and all prisoners taken
393 into confinement after, July 1, 2011.

394 Section 6. (1) The Legislature finds that the costs
395 incurred by the state related to unauthorized immigration are
396 exacerbated by the failure of the Federal Government to enforce
397 immigration laws adequately and to adopt and implement
398 comprehensive reforms to immigration laws in order to control
399 and contain unauthorized immigration more effectively.

400 (2) (a) The Agency for Workforce Innovation, in consultation
401 with the Office of Economic and Demographic Research, shall
402 prepare a report by December 1, 2011, quantifying the costs to
403 the state which are attributable to unauthorized immigration.
404 The agency shall submit the report to the Governor, the
405 President of the Senate, and the Speaker of the House of
406 Representatives by that date.

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407 (b) Before January 1, 2012, the director of the Agency for
408 Workforce Innovation shall, in consultation with the Office of
409 the Governor, submit to the appropriate federal agency or
410 official a request, based on the total costs quantified under
411 paragraph (a), for reimbursement to the state of those costs or
412 a corresponding reduction in or forgiveness of any debt,
413 interest payments, or other moneys owed by the state to the
414 Federal Government as a result of borrowing from the Federal
415 Government to fund unemployment compensation claims.

416 Section 7. This act shall take effect July 1, 2011.