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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/14/2011	.	
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The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

(1) "Agency" means a department, board, bureau, district, commission, authority, or other similar body of this state or a



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14 county, municipality, special district, or other political
15 subdivision of this state which issues a license for purposes of
16 operating a business in this state or in any jurisdiction within
17 this state.

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

21 (3) "Employer" means a person or agency that employs one or
22 more employees in this state. In the case of an independent
23 contractor, the term means the independent contractor and does
24 not mean the person or agency that uses the contract labor.

25 (4) "E-Verify Program" means the program for electronic
26 verification of employment eligibility which is operated by the
27 United States Department of Homeland Security, or any successor
28 program.

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

33 (6) "License" means any license, permit, certificate,
34 approval, registration, charter, or similar form of
35 authorization that is required by law and issued by any agency
36 for the purpose of operating a business in this state. The term
37 includes, but is not limited to, articles of incorporation, a
38 certificate of partnership, a partnership registration, articles
39 of organization, and a transaction privilege tax license.

40 Section 3. Section 448.31, Florida Statutes, is created to
41 read:

42 448.31 Verification of employment eligibility.-



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43 (1) An employer who hires a new employee on or after July
44 1, 2012, shall:

45 (a) Register with the E-Verify Program;

46 (b) Upon acceptance on or after that date of an offer of
47 employment by the new employee, verify the employment
48 eligibility of the employee through, and in accordance with the
49 requirements of, the E-Verify Program; and

50 (c) Maintain a record of the verification for 3 years after
51 the date of hire or one year after the date employment ends,
52 whichever is longer.

53 (2) (a) The requirements of subsection (1) do not apply if
54 the new employee presents to the employer one of the following
55 documents as part of the I-9 process for verifying employment
56 eligibility under federal law:

57 1. An unexpired United States passport or United States
58 passport card;

59 2. An unexpired driver's license that is issued by a state
60 or outlying possession of the United States and that contains a
61 photograph of the employee;

62 3. An unexpired foreign passport that contains a United
63 States visa evidencing applicable work authorization and a
64 corresponding unexpired Form I-94; or

65 4. A secure national identification card, or similar
66 document issued pursuant to federal law.

67 (b) The employer shall maintain, for 3 years after the date
68 of hire or one year after the date employment ends, whichever is
69 longer, a record of the type of document the employee presented,
70 including a legible photocopy of the document. Photocopies may
71 only be used for the verification process and must be retained



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72 with the federal Form I-9.

73 (3) The Attorney General shall quarterly request from the
74 United States Department of Homeland Security a list of
75 employers in this state who are registered with the E-Verify
76 Program. The Attorney General shall make the list available on
77 the website for the Office of the Attorney General but shall
78 include a conspicuous notation that employers who comply with
79 subsection (2) are exempt from the requirement to register with
80 the E-Verify Program.

81 (4) An employer who fails to comply with this section is
82 subject to the suspension of any license held by the employer
83 through the period of noncompliance. The suspension of a license
84 pursuant to this subsection must comply with the provisions of
85 s. 120.60(5).

86 (5) An employer who terminates an employee in accordance
87 with federal regulations upon a final determination of
88 ineligibility for employment through the E-Verify Program is not
89 liable for wrongful termination.

90 Section 4. Law enforcement and criminal justice agency
91 coordination with Federal Government on unauthorized
92 immigration.—

93 (1) LEGISLATIVE INTENT.—It is the intent of the Legislature
94 that law enforcement and criminal justice agencies in this state
95 work cooperatively with the Federal Government in the
96 identification of unauthorized immigrants and the enforcement of
97 state and federal immigration laws. It further is the intent of
98 the Legislature to maximize opportunities to transfer
99 responsibility for the custody and detention of unauthorized
100 immigrants who are accused or convicted of crimes from state and



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101 local governments to the Federal Government in order to ensure
102 the safety of the residents of this state and to reduce costs to
103 the criminal justice system, while also protecting the due
104 process rights of individuals accused or convicted of crimes.

105 (2) DELEGATED ENFORCEMENT AUTHORITY.—

106 (a)1. The Department of Corrections shall request from the
107 United States Department of Homeland Security approval to enter
108 into a memorandum of agreement to have employees or contractors
109 of the Department of Corrections trained by the Department of
110 Homeland Security as jail enforcement officers under s. 287(g)
111 of the federal Immigration and Nationality Act. The Department
112 of Corrections shall take all actions necessary to maintain the
113 agreement.

114 2. The Department of Corrections shall report by November
115 1, 2011, to the Governor, the President of the Senate, and the
116 Speaker of the House of Representatives on the status of
117 implementation of this paragraph. If the department has not
118 entered into a memorandum of agreement with the Department of
119 Homeland Security by that date, the department shall identify in
120 the report any barriers to full implementation of this
121 paragraph.

122 3. By February 1 of each year, the Department of
123 Corrections shall report to the Governor, the President of the
124 Senate, and the Speaker of the House of Representatives on the
125 enforcement activities conducted under this paragraph,
126 including, but not limited to, the number of inmates identified
127 as being unauthorized immigrants, placed in federal custody, or
128 deported.

129 (b)1. The Department of Law Enforcement shall request from



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130 the United States Department of Homeland Security approval to
131 enter into a memorandum of agreement to have employees of the
132 Department of Law Enforcement trained by the Department of
133 Homeland Security as task force officers under s. 287(g) of the
134 federal Immigration and Nationality Act. The Department of Law
135 Enforcement shall take all actions necessary to maintain the
136 agreement.

137 2. By February 1 of each year, the Department of Law
138 Enforcement shall report to the Governor, the President of the
139 Senate, and the Speaker of the House of Representatives on the
140 enforcement activities conducted under this paragraph.

141 (c) The sheriff of each county shall evaluate the
142 feasibility of entering into a memorandum of agreement with the
143 United States Department of Homeland Security to have employees
144 of the sheriff trained by the Department of Homeland Security as
145 jail enforcement officers or task force officers under s. 287(g)
146 of the federal Immigration and Nationality Act. The Department
147 of Law Enforcement, upon request by a sheriff, shall assist the
148 sheriff with the feasibility evaluation. If the sheriff
149 determines that entering into an agreement is feasible, the
150 sheriff shall make a request for an agreement to the Department
151 of Homeland Security.

152 (3) IDENTIFICATION UPON ARREST.—

153 (a) When a person is confined in a jail, prison, or other
154 criminal detention facility, the arresting agency shall make a
155 reasonable effort to determine the nationality of the person and
156 whether the person is present in the United States lawfully,
157 including, but not limited to, participating in the submission
158 of fingerprints pursuant to the agreement under paragraph (b).



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159 If the arresting agency establishes, independent of the
160 submission of fingerprints, that the person is not lawfully
161 present in the United States, the agency shall notify the United
162 States Department of Homeland Security.

163 (b) The Department of Law Enforcement shall enter into, and
164 take all actions necessary to maintain, a memorandum of
165 agreement with the Department of Homeland Security to implement
166 a program through which fingerprints submitted by local law
167 enforcement agencies during the arrest and booking process are
168 checked against federal databases in order to assess the
169 immigration status of individuals in custody.

170 (c) This subsection may not be construed to deny a person
171 bond or to prevent release of a person from confinement if the
172 person is otherwise eligible for release. However, for the
173 purpose of the bail determination required by s. 903.046,
174 Florida Statutes, a determination that the person is not present
175 in the United States lawfully raises a presumption that there is
176 a risk of flight to avoid prosecution.

177 Section 5. Section 945.80, Florida Statutes, is created to
178 read:

179 945.80 Removal and deportation of criminal aliens.—

180 (1) Notwithstanding any law to the contrary, and pursuant
181 to s. 241(a)(4)(B)(ii) of the federal Immigration and
182 Nationality Act, the secretary of the department shall release a
183 prisoner to the custody and control of the United States
184 Immigration and Customs Enforcement if:

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

186 (b) The department has received a final order of removal
187 for the prisoner from the United States Immigration and Customs



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188 Enforcement; and

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

191
192 A person is ineligible for release under this section if he or
193 she would be ineligible for control release under s.
194 947.146(3)(a)-(m).

195 (2)(a) The department shall identify, during the inmate-
196 reception process and among the existing inmate population,
197 prisoners who are eligible for removal under this section and
198 determine whether removal is appropriate and in the best
199 interest of the state.

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

203 (3) Upon approval for removal of the prisoner under this
204 section, the department shall establish a release date for the
205 prisoner to be transferred to federal custody. The department
206 shall maintain exclusive control of and responsibility for the
207 custody and transportation of the prisoner until the prisoner is
208 physically transferred to federal custody.

209 (4)(a) If a prisoner who is released under this section
210 returns unlawfully to the United States, upon notice from any
211 state or federal law enforcement agency that the prisoner is
212 incarcerated, the secretary shall revoke the release of the
213 prisoner and seek the return of the prisoner to the custody of
214 the department in order to serve the remainder of the sentence
215 imposed by the court. The prisoner is not eligible for probation
216 or community control with respect to any sentence affected by



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217 the release under this section.

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

220 (5) The secretary of the department may enter into an
221 agreement with the United States Department of Homeland Security
222 regarding the rapid repatriation of removable custodial aliens
223 from the United States pursuant to this section.

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

226 (a) The number of prisoners who are transferred to federal
227 custody;

228 (b) The number of prisoners who reenter the United States;
229 and

230 (c) The annual cost-avoidance achieved.

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

234 Section 6. (1) The Legislature finds that the costs
235 incurred by the state related to unauthorized immigration are
236 exacerbated by the failure of the Federal Government to enforce
237 immigration laws adequately and to adopt and implement
238 comprehensive reforms to immigration laws in order to control
239 and contain unauthorized immigration more effectively.

240 (2) (a) The Agency for Workforce Innovation, in consultation
241 with the Office of Economic and Demographic Research, shall
242 prepare a report by December 1, 2011, quantifying the costs to
243 the state which are attributable to unauthorized immigration.
244 The agency shall submit the report to the Governor, the
245 President of the Senate, and the Speaker of the House of



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246 Representatives by that date.

247 (b) Before January 1, 2012, the director of the Agency for
248 Workforce Innovation shall, in consultation with the Office of
249 the Governor, submit to the appropriate federal agency or
250 official a request, based on the total costs quantified under
251 paragraph (a), for reimbursement to the state of those costs or
252 a corresponding reduction in or forgiveness of any debt,
253 interest payments, or other moneys owed by the state to the
254 Federal Government as a result of borrowing from the Federal
255 Government to fund unemployment compensation claims.

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

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259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete everything before the enacting clause
262 and insert:

263 A bill to be entitled

264 An act relating to unauthorized immigrants; directing the
265 Division of Statutory Revision to designate specified new
266 statutory sections as part III of ch. 448, F.S., and name the
267 part "Unauthorized Immigrants"; creating s. 448.30, F.S.;
268 defining terms; creating s. 448.31, F.S.; requiring every
269 employer to use the federal program for electronic verification
270 of employment eligibility in order to verify the employment
271 eligibility of each employee hired on or after a specified date;
272 providing an exception in the case of employees who present
273 specified documents to the employer; requiring the Attorney
274 General to request from the Department of Homeland Security a



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275 list of employers who are registered with the E-Verify Program
276 and to post that list to the Attorney General's website;
277 providing that an employer who does not comply with the
278 employment requirements is subject to loss of its license to do
279 business in this state; providing that an employer who
280 terminates an employee under certain conditions is not liable
281 for wrongful termination; providing legislative intent for law
282 enforcement and criminal justice agencies to coordinate with the
283 Federal Government on the identification of unauthorized
284 immigrants and enforcement of immigration laws; directing the
285 Department of Corrections and the Department of Law Enforcement
286 to pursue and maintain agreements with the United States
287 Department of Homeland Security for the training of certain
288 personnel related to the enforcement of immigration laws;
289 requiring reports on activity under the agreements; directing
290 sheriffs to evaluate the feasibility of entering into such
291 agreements; directing arresting agencies to make reasonable
292 efforts to determine whether arrestees are present in the United
293 States lawfully; requiring the Department of Law Enforcement to
294 enter into and maintain an agreement with the United States
295 Department of Homeland Security for checking fingerprints of
296 arrestees against federal databases to determine immigration
297 status; providing for a presumption as to risk of flight in
298 order to avoid prosecution; creating s. 945.80, F.S.; requiring
299 the Department of Corrections to release nonviolent inmates to
300 the custody of the United States Immigration and Customs
301 Enforcement under certain circumstances; requiring the
302 department to identify inmates who are eligible for removal and
303 deportation; establishing certain procedures for the transfer of



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304 an inmate to federal custody; providing for a released inmate to
305 serve the remainder of his or her sentence upon unlawfully
306 returning to the United States; authorizing the secretary of the
307 department to enter into an agreement with the Department of
308 Homeland Security regarding the rapid repatriation of removable
309 custodial aliens; requiring the department to compile
310 statistics; providing for applicability; providing legislative
311 findings related to costs incurred by the state from
312 unauthorized immigration; requiring the Agency for Workforce
313 Innovation to prepare a report quantifying the costs; requiring
314 the director of the agency to submit to the Federal Government a
315 request for reimbursement of the costs or a reduction in moneys
316 owed to the Federal Government as a result of borrowing to fund
317 unemployment compensation claims; providing an effective date.

318