

FOR CONSIDERATION By the Committee on Judiciary

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1 A bill to be entitled
2 An act relating to unauthorized aliens; directing the
3 Division of Statutory Revision to designate specified
4 new statutory sections as part III of ch. 448, F.S.,
5 and name the part "Unauthorized Aliens"; creating s.
6 448.30, F.S.; defining terms; creating s. 448.31,
7 F.S.; requiring every employer to use the federal
8 program for electronic verification of employment
9 eligibility in order to verify the employment
10 eligibility of each employee hired on or after a
11 specified date; requiring the Attorney General to
12 request from the Department of Homeland Security a
13 list of employers who are registered with the E-Verify
14 Program and to post that list to the Attorney
15 General's website; providing that an employer who does
16 not use the program to verify the employment
17 eligibility of the employee is subject to loss of its
18 license to do business in this state; providing that
19 an employer who terminates an employee under certain
20 conditions is not liable for wrongful termination;
21 providing legislative intent for law enforcement and
22 criminal justice agencies to coordinate with the
23 Federal Government on the identification of
24 unauthorized immigrants and enforcement of immigration
25 laws; directing the Department of Corrections and the
26 Department of Law Enforcement to pursue and maintain
27 agreements with the United States Department of
28 Homeland Security for the training of certain
29 personnel related to the enforcement of immigration

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30 laws; requiring reports on activity under the
31 agreements; directing sheriffs to evaluate the
32 feasibility of entering into such agreements;
33 directing arresting agencies to make reasonable
34 efforts to determine whether arrestees are present in
35 the United States lawfully; requiring the Department
36 of Law Enforcement to enter into and maintain an
37 agreement with the United States Department of
38 Homeland Security for checking fingerprints of
39 arrestees against federal databases to determine
40 immigration status; providing for a presumption as to
41 risk of flight in order to avoid prosecution; creating
42 s. 945.80, F.S.; requiring the Department of
43 Corrections to release nonviolent inmates to the
44 custody of the United States Immigration and Customs
45 Enforcement under certain circumstances; requiring the
46 department to identify inmates who are eligible for
47 removal and deportation; establishing certain
48 procedures for the transfer of an inmate to federal
49 custody; providing for a released inmate to serve the
50 remainder of his or her sentence upon unlawfully
51 returning to the United States; authorizing the
52 secretary of the department to enter into an agreement
53 with the Department of Homeland Security regarding the
54 rapid repatriation of removable custodial aliens;
55 requiring the department to compile statistics;
56 providing for applicability; providing legislative
57 findings related to costs incurred by the state from
58 unauthorized immigration; requiring the Agency for

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59 Workforce Innovation to prepare a report quantifying
60 the costs; requiring the director of the agency to
61 submit to the Federal Government a request for
62 reimbursement of the costs or a reduction in moneys
63 owed to the Federal Government as a result of
64 borrowing to fund unemployment compensation claims;
65 providing an effective date.
66

67 Be It Enacted by the Legislature of the State of Florida:
68

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

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

75 448.30 Definitions.—As used in this part, the term:

76 (1) "Agency" means a department, board, bureau, district,
77 commission, authority, or other similar body of this state or a
78 county, municipality, special district, or other political
79 subdivision of this state which issues a license for purposes of
80 operating a business in this state or in any jurisdiction within
81 this state.

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

85 (3) "Employer" means a person or agency that employs one or
86 more employees in this state. In the case of an independent
87 contractor, the term means the independent contractor and does

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88 not mean the person or agency that uses the contract labor.

89 (4) "E-Verify Program" means the program for electronic
90 verification of employment eligibility which is operated by the
91 United States Department of Homeland Security, or any successor
92 program.

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

97 (6) "License" means any license, permit, certificate,
98 approval, registration, charter, or similar form of
99 authorization that is required by law and issued by any agency
100 for the purpose of operating a business in this state. The term
101 includes, but is not limited to, articles of incorporation, a
102 certificate of partnership, a partnership registration, articles
103 of organization, and a transaction privilege tax license.

104 (7) "Unauthorized alien" has the same meaning as provided
105 in 8 U.S.C. s. 1324a(h) (3).

106 Section 3. Section 448.31, Florida Statutes, is created to
107 read:

108 448.31 Verification of employment eligibility.-

109 (1) An employer who hires a new employee on or after
110 January 1, 2012, shall:

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

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

116 (c) Maintain a record of the verification for 3 years or

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117 the duration of the employment of the employee, whichever is
118 longer.

119 (2) The Attorney General shall quarterly request from the
120 United States Department of Homeland Security a list of
121 employers in this state who are registered with the E-Verify
122 Program. The Attorney General shall make the list available on
123 the website for the Office of the Attorney General.

124 (3) An employer who fails to comply with subsection (1) is
125 subject to the suspension of any license held by the employer
126 through the period of noncompliance. The suspension of a license
127 pursuant to this subsection must comply with the provisions of
128 s. 120.60(5).

129 (4) An employer who terminates an employee in accordance
130 with federal regulations upon a final determination of
131 ineligibility for employment through the E-Verify Program is not
132 liable for wrongful termination.

133 Section 4. Law enforcement and criminal justice agency
134 coordination with Federal Government on unauthorized
135 immigration.-

136 (1) LEGISLATIVE INTENT.-It is the intent of the Legislature
137 that law enforcement and criminal justice agencies in this state
138 work cooperatively with the Federal Government in the
139 identification of unauthorized immigrants and the enforcement of
140 state and federal immigration laws. It further is the intent of
141 the Legislature to maximize opportunities to transfer
142 responsibility for the custody and detention of unauthorized
143 immigrants who are accused or convicted of crimes from state and
144 local governments to the Federal Government in order to ensure
145 the safety of the residents of this state and to reduce costs to

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146 the criminal justice system, while also protecting the due
147 process rights of individuals accused or convicted of crimes.

148 (2) DELEGATED ENFORCEMENT AUTHORITY.-

149 (a)1. The Department of Corrections shall request from the
150 United States Department of Homeland Security approval to enter
151 into a memorandum of agreement to have employees or contractors
152 of the Department of Corrections trained by the Department of
153 Homeland Security as jail enforcement officers under s. 287(g)
154 of the federal Immigration and Nationality Act. The Department
155 of Corrections shall take all actions necessary to maintain the
156 agreement.

157 2. The Department of Corrections shall report by November
158 1, 2011, to the Governor, the President of the Senate, and the
159 Speaker of the House of Representatives on the status of
160 implementation of this subsection. If the department has not
161 entered into a memorandum of agreement with the Department of
162 Homeland Security by that date, the department shall identify in
163 the report any barriers to full implementation of this
164 subsection.

165 3. By February 1 of each year, the Department of
166 Corrections shall report to the Governor, the President of the
167 Senate, and the Speaker of the House of Representatives on the
168 enforcement activities conducted under this subsection,
169 including, but not limited to, the number of inmates identified
170 as being unauthorized immigrants, placed in federal custody, or
171 deported.

172 (b)1. The Department of Law Enforcement shall request from
173 the United States Department of Homeland Security approval to
174 enter into a memorandum of agreement to have employees of the

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175 Department of Law Enforcement trained by the Department of
176 Homeland Security as task force officers under s. 287(g) of the
177 federal Immigration and Nationality Act. The Department of Law
178 Enforcement shall take all actions necessary to maintain the
179 agreement.

180 2. By February 1 of each year, the Department of Law
181 Enforcement shall report to the Governor, the President of the
182 Senate, and the Speaker of the House of Representatives on the
183 enforcement activities conducted under this subsection.

184 (c) The sheriff of each county shall evaluate the
185 feasibility of entering into a memorandum of agreement with the
186 United States Department of Homeland Security to have employees
187 of the sheriff trained by the Department of Homeland Security as
188 jail enforcement officers or task force officers under s. 287(g)
189 of the federal Immigration and Nationality Act. The Department
190 of Law Enforcement, upon request by a sheriff, shall assist the
191 sheriff with the feasibility evaluation. If the sheriff
192 determines that entering into an agreement is feasible, the
193 sheriff shall make a request for an agreement to the Department
194 of Homeland Security.

195 (3) IDENTIFICATION UPON ARREST.—

196 (a) When a person is confined in a jail, prison, or other
197 criminal detention facility for a period of time, the arresting
198 agency shall make a reasonable effort to determine the
199 nationality of the person and whether the person is present in
200 the United States lawfully, including, but not limited to,
201 participating in the submission of fingerprints pursuant to the
202 agreement under paragraph (b). If the arresting agency
203 establishes, independent of the submission of fingerprints, that

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204 the person is not lawfully present in the United States, the
205 agency shall notify the United States Department of Homeland
206 Security.

207 (b) The Department of Law Enforcement shall enter into, and
208 take all actions necessary to maintain, a memorandum of
209 agreement with the Department of Homeland Security to implement
210 a program through which fingerprints submitted by local law
211 enforcement agencies during the arrest and booking process are
212 checked against federal databases in order to assess the
213 immigration status of individuals in custody.

214 (c) This subsection may not be construed to deny a person
215 bond or to prevent release of a person from confinement if the
216 person is otherwise eligible for release. However, for the
217 purpose of the bail determination required by s. 903.046,
218 Florida Statutes, a determination that the person is not present
219 in the United States lawfully raises a presumption that there is
220 a risk of flight to avoid prosecution.

221 Section 5. Section 945.80, Florida Statutes, is created to
222 read:

223 945.80 Removal and deportation of criminal aliens.—

224 (1) Notwithstanding any law to the contrary, and pursuant
225 to s. 241(a)(4)(B)(ii) of the federal Immigration and
226 Nationality Act, the secretary of the department shall release a
227 prisoner to the custody and control of the United States
228 Immigration and Customs Enforcement if:

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

230 (b) The department has received a final order of removal
231 for the prisoner from the United States Immigration and Customs
232 Enforcement; and

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

235
236 A person is ineligible for release under this section if he or
237 she would be ineligible for control release under s.
238 947.146(3) (a) or (3) (c)-(m).

239 (2) (a) The department shall identify, during the inmate-
240 reception process and among the existing inmate population,
241 prisoners who are eligible for removal under this section and
242 determine whether removal is appropriate and in the best
243 interest of the state.

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

247 (3) Upon approval for removal of the prisoner under this
248 section, the department shall establish a release date for the
249 prisoner to be transferred to federal custody. The department
250 shall maintain exclusive control of and responsibility for the
251 custody and transportation of the prisoner until the prisoner is
252 physically transferred to federal custody.

253 (4) (a) If a prisoner who is released under this section
254 returns unlawfully to the United States, upon notice from any
255 state or federal law enforcement agency that the prisoner is
256 incarcerated, the secretary shall revoke the release of the
257 prisoner and seek the return of the prisoner to the custody of
258 the department in order to serve the remainder of the sentence
259 imposed by the court. The prisoner is not eligible for probation
260 or community control with respect to any sentence affected by
261 the release under this section.

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

264 (5) The secretary of the department may enter into an
265 agreement with the United States Department of Homeland Security
266 regarding the rapid repatriation of removable custodial aliens
267 from the United States pursuant to this section.

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

270 (a) The number of prisoners who are transferred to federal
271 custody;

272 (b) The number of prisoners who reenter the United States;
273 and

274 (c) The annual cost-avoidance achieved.

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

278 Section 6. (1) The Legislature finds that unauthorized
279 immigration contributes directly and indirectly to substantial
280 costs to the state in policy areas, including, but not limited
281 to, law enforcement, criminal justice, labor and employment,
282 education, health care, and human services. The Legislature
283 further finds that unauthorized immigration and the costs
284 attributable to it are placing a burden on the limited fiscal
285 and human resources of the state and are impairing the economic
286 recovery of the state. Additionally, the Legislature finds that
287 the costs related to unauthorized immigration are exacerbated by
288 the failure of the Federal Government to enforce immigration
289 laws adequately and to adopt and implement comprehensive reforms
290 to immigration laws in order to control and contain unauthorized

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291 immigration more effectively.

292 (2) (a) The Agency for Workforce Innovation, in consultation
293 with the Office of Economic and Demographic Research, shall
294 prepare a report by December 1, 2011, quantifying the costs to
295 the state which are attributable to unauthorized immigration.
296 The agency shall submit the report to the Governor, the
297 President of the Senate, and the Speaker of the House of
298 Representatives by that date.

299 (b) Before January 1, 2012, the director of the Agency for
300 Workforce Innovation shall, in consultation with the Office of
301 the Governor, submit to the appropriate federal agency or
302 official a request, based on the total costs quantified under
303 paragraph (a), for reimbursement to the state of those costs or
304 a corresponding reduction in or forgiveness of any debt,
305 interest payments, or other moneys owed by the state to the
306 Federal Government as a result of borrowing from the Federal
307 Government to fund unemployment compensation claims.

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