

1 A bill to be entitled
 2 An act relating to verification of employment
 3 eligibility; providing definitions; requiring
 4 employers to use the E-Verify system to verify
 5 employment eligibility; providing penalties;
 6 prohibiting an employer from knowingly or
 7 intentionally employing an unauthorized alien;
 8 providing penalties; requiring the Department of
 9 Business and Professional Regulation to adopt rules;
 10 providing responsibilities and powers of the
 11 department; providing procedures for the filing of a
 12 complaint; providing criminal penalties; requiring the
 13 department to establish a website for specified
 14 purposes; providing a rebuttable presumption of
 15 compliance with this act; providing applicability;
 16 providing for severability; providing an effective
 17 date.

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

20
 21 Section 1. Use of E-verify system required for private
 22 employers; business licensing enforcement.-

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

24 (a) "Agency" means an agency, department, board, or
 25 commission of this state or a county, municipality, or town

26 issuing a license for the purpose of operating a business in
27 this state.

28 (b) "Department" means the Department of Business and
29 Professional Regulation.

30 (c) "E-Verify system" means the Employment Authorization
31 Program, formerly the "Basic Pilot Program," under Pub. L. No.
32 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
33 30, 1996), as amended, or any successor program designated by
34 the Federal Government for verification that an employee is an
35 employment-authorized alien as by defined 8 U.S.C. s. 1324a.

36 (d) "Employee" means any person who performs employment
37 services in this state for an employer pursuant to an employment
38 relationship between the person and employer. The term does not
39 include independent contractors.

40 (e) "Employer" means any individual or type of
41 organization transacting business in this state which holds or
42 has applied for a license issued by an agency and employs
43 individuals who perform employment services. The term does not
44 include an entity that hires an independent contractor to
45 perform work or the occupant or owner of a private residence who
46 hires casual domestic labor to perform work customarily
47 performed by a homeowner entirely within a private residence.

48 (f) "Independent contractor" means an individual or entity
49 who conducts independent business, contracts to do a piece of
50 work according to his or her own means and methods, and who is

51 not subject to the control and direction of the employer for
52 whom work is being performed. Whether an individual or entity is
53 an independent contractor, regardless of what the individual or
54 entity calls itself, shall be determined on an individual basis
55 and such determination must include whether the individual or
56 entity supplies the tools or materials, makes services available
57 to the general public, works for a number of clients at the same
58 time, has an opportunity for profit or loss as a result of labor
59 or services provided, invests in the facilities for work,
60 directs the order or sequence in which the work is to be done,
61 and determines the hours during which the work is to be done.

62 (g) "License" means a license, permit, certificate,
63 approval, registration, charter, or similar form of
64 authorization required by law and issued by an agency for the
65 purpose of operating a business. A license includes, but is not
66 limited to:

- 67 1. Articles of incorporation.
- 68 2. A certificate of partnership, a partnership
69 registration, or articles of organization.
- 70 3. A grant of authority issued pursuant to state or
71 federal law.
- 72 4. A transaction privilege tax license.

73 (h) "Unauthorized alien" means an alien who is not
74 authorized under federal law to be employed in the United
75 States, as provided in 8 U.S.C. s. 1324a(h) (3).

76 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; BUSINESS
77 PROBATION.—

78 (a) Effective July 1, 2017, every employer shall, after
79 making an offer of employment which has been accepted by an
80 employee, use the E-Verify system to verify the employment
81 eligibility of the employee. Verification must occur within the
82 period stipulated by federal law or regulations after the hiring
83 of the employee.

84 (b)1. A business that has not complied with paragraph (a)
85 shall be placed on probation by the department for a period of
86 one year, during which time the employer must submit quarterly
87 reports to the department demonstrating compliance with
88 paragraph (a).

89 2. A subsequent finding of noncompliance with paragraph
90 (a) within 3 years of a first finding as provided in
91 subparagraph 1. shall result in the suspension of the employer's
92 business licenses for at least 10, but not more than 30, days.

93 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION;
94 SUSPENSION OF LICENSE.—

95 (a) An employer may not knowingly or intentionally employ
96 an unauthorized alien.

97 (b) An employer that has not complied with paragraph (a),
98 shall, after the department has provided 72 hours written notice
99 to the employer, lose its license to do business in this state
100 until the employer demonstrates, to the satisfaction of the

101 department, that the unauthorized alien has been terminated and
102 the employer has paid a reinstatement fee equal to the cost of
103 investigating and enforcing the matter, not to exceed \$1,000 for
104 each investigation.

105 (c) If an employer is found to have five or more
106 unauthorized aliens employed by the employer on the same date,
107 the employer shall, in addition to the penalty in paragraph (b),
108 lose its license to do business in this state for an additional
109 7, but not more than 30, days.

110 (d) If an employer is found, within 3 years after a
111 finding of a violation of paragraph (a), to have committed a
112 second violation, the employer shall lose its license to do
113 business in this state for an additional 30, but not more than
114 60, days.

115 (e) If an employer is found, within 3 years after a
116 finding of a violation of paragraph (a), to have committed a
117 third violation, and for each subsequent violation, the employer
118 shall lose its license to do business in this state for an
119 additional 180 days.

120 (4) COMPLIANCE; NOTICE; COMPLAINTS; FALSE AND FRIVOLOUS
121 COMPLAINTS.-

122 (a) At least 180 days after July 1, 2017, the department
123 shall adopt rules necessary for the implementation and
124 enforcement of this act. If the department does not adopt rules
125 within the 180 days, any resident of the state may seek judicial

126 relief to compel the department's compliance with these duties.

127 (b) The department and any agency shall include a notice
 128 of the requirements of this act with all license applications.

129 (c) The department shall develop and administer a
 130 statewide random auditing program to inspect employers for
 131 compliance with the provisions of this act.

132 (d) The department, its inspectors, agents, or designees,
 133 upon proper presentation of credentials to the owner, manager,
 134 or agent of the employer, may enter an employer's place of
 135 business at any reasonable time and may question, either
 136 publicly or privately, any employer or owner, or manager, agent,
 137 or employee of the employer, and inspect, investigate,
 138 reproduce, or photograph any original business record relevant
 139 to determining compliance with the provisions of this act.

140 (e) A person who has actual or constructive knowledge that
 141 an employer employs, or has within the last 90 days employed, an
 142 unauthorized alien may file a complaint with the department.
 143 Such person is protected by the Whistle-blower's Act pursuant to
 144 chapter 112, if the complaint leads to a finding of a violation
 145 of this act by that person's employer.

146 (f) A person who knowingly files a false and frivolous
 147 complaint under this act commits a misdemeanor of the second
 148 degree, punishable as provided in s. 775.082 or s. 775.083.

149 (5) DEPARTMENT WEBSITE; NOTICE TO THE UNITED STATES
 150 IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY.—

151 (a) The department shall establish a website to assist
152 employers in complying with this act. The website shall maintain
153 a public database containing copies of all violations under this
154 section and make such information available on the website.

155 (b) If the department finds that an employer has violated
156 the provisions of paragraph (2)(a) or (3)(a), the department
157 shall notify the United States Immigration and Customs
158 Enforcement Agency.

159 (6) REBUTTABLE PRESUMPTION.—For the purposes of this act,
160 compliance with paragraph (2)(a) creates a rebuttable
161 presumption that an employer did not knowingly employ an
162 unauthorized alien in violation of subsection (3).

163 (7) APPLICABILITY; TERMINATION OF AN EMPLOYEE.—

164 (a) The provisions of this act shall be construed in a
165 manner so as to be fully consistent with any applicable federal
166 law.

167 (b) An employer who terminates an employee to comply with
168 the provisions of this act is not subject to a civil action for
169 wrongful termination of the employee.

170 Section 2. If any provision of this act or its application
171 to any person or circumstance is held invalid, the invalidity
172 does not affect the remaining provisions or applications of the
173 act which can be given effect without the invalid provision or
174 application, and to this end the provisions of this act are
175 severable.

HB 443

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Section 3. This act shall take effect July 1, 2017.