A bill to be entitled
An act relating to the verification of employment eligibility; defining terms; requiring employers to register with and use the E-Verify system beginning on a specified date to verify the employment eligibility of new employees; requiring the Department of Economic Opportunity to order certain agencies to suspend an employer’s license under certain circumstances; prohibiting an employer from knowingly employing an unauthorized alien; authorizing certain persons to file a specified complaint with the department; prohibiting the filing of a complaint based on race, color, or national origin; providing that a person who knowingly files a false or frivolous complaint commits a misdemeanor of the second degree; providing responsibilities and powers of the department relating to notice, investigations, and subpoenas for the production of records; prohibiting the department from independently making a final determination regarding whether an employee is an unauthorized alien; requiring the department to notify the United States Immigration and Customs Enforcement Agency and specified law enforcement agencies of certain violations; requiring the department to order certain employers to take specified actions after the finding of a violation; providing for the suspension of an employer’s license upon the finding of certain violations; providing civil immunity for an employer registered with and using the E-Verify system;
providing specified immunity and nonliability for an employer who complies in good faith with the E-Verify system; requiring the department to maintain a public database containing certain information and make such information available on its website; authorizing the department to apply for a judicial order directing an agency or employer to comply with an order issued by the department; creating a rebuttable presumption for certain employers that the employer did not knowingly employ an unauthorized alien; authorizing an employer or employee to seek an injunction under certain circumstances; providing that certain actions by an employer constitute a deceptive and unfair trade practice; providing that an employee aggrieved by such actions has a private cause of action against the employer and providing available remedies; providing that a cause of action does not exist against an employer under specified circumstances; providing construction; creating s. 287.137, F.S.; defining terms; requiring public employers, contractors, and subcontractors to register with and use the E-Verify system; prohibiting such entities from entering into a contract unless each party to the contract registers with and uses the E-Verify system; requiring a subcontractor to provide certain certification to a contractor, which the contractor must maintain for a specified period of time; authorizing the termination of a contract under certain conditions; providing that such termination is not a breach of contract;
Be It Enacted by the Legislature of the State of Florida:

Section 1. Definitions; use of E-Verify system required for private employers; business licensing enforcement; private right of action for wrongfully discharged employee.—

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

(a) “Agency” means an agency, department, board, or commission of this state or a county, municipality, or town issuing a license to operate a business in this state.

(b) “Department” means the Department of Economic Opportunity.

(c) “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

(d) “Employee” means a person who performs labor or services for an employer in exchange for salary, wages, or other remuneration. The term does not include a licensed independent contractor as defined in federal laws or regulations.

(e) “Employer” means a person or entity that employs persons to perform labor or services in exchange for salary, wages, or other remuneration. The term does not include:

1. A government employer;
2. The occupant or owner of a private residence who hires:
a. Casual labor, as defined in s. 443.036, Florida Statutes, to be performed entirely within the private residence; or

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

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

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

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

1. An article of incorporation.
2. A certificate of partnership, partnership registration, or article of organization.
3. A grant of authority issued pursuant to state or federal law.
4. A transaction privilege tax license.

(h) “Unauthorized alien” means a person who is not authorized under federal law to be employed in the United
(2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF BUSINESS LICENSE.—

(a) Beginning January 1, 2020, an employer shall, after making an offer of employment which has been accepted by a person, use the E-Verify system to verify such person’s employment eligibility. Verification must occur within the period stipulated by applicable federal rules or regulations. However, an employer is not required to verify the employment eligibility of a continuing employee hired before the date of the employer’s registration with the E-Verify system.

(b) If an employer does not register with the E-Verify system, the department must order the appropriate agency to suspend all applicable licenses held by the employer until the employer registers with the E-Verify system and provides the department with an affidavit stating such fact.

(3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE AND FRIVOLOUS COMPLAINTS; VIOLATION; CLASSIFICATION; SUSPENSION AND REVOCATION OF LICENSE.—Beginning January 1, 2020:

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

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

(c) A complaint may not be based on race, color, or national origin, except to the extent permitted by state or federal law.
(d) A person who knowingly files a false or frivolous complaint under this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(e) Upon the receipt of a valid complaint of a violation of paragraph (a), the department shall notify the employer of the complaint and direct the employer to notify any employees named in the complaint.

(f) The department shall investigate whether a violation of paragraph (a) has occurred and hold an administrative hearing at which the employer has the right to counsel and may present any evidence it desires. The department shall request that the Federal Government verify, pursuant to 8 U.S.C. s. 1373(c), the citizenship or immigration status of any employee named in the complaint, and the department must rely upon such verification. The department may not independently make a final determination as to whether an employee is an unauthorized alien.

(g) The department may issue a subpoena for an employer to produce employment records that relate to employment recruitment, hiring, or termination policies, practices, or acts relating to the investigation of a valid complaint of a violation of paragraph (a).

(h) Upon finding that an employer has violated paragraph (a), the department shall notify:

1. The United States Immigration and Customs Enforcement Agency of the identity of the unauthorized alien and, if known, the physical address at which the unauthorized alien resides.

2. The local law enforcement agency of the jurisdiction in which the violation occurred.
which the unauthorized alien resides.

(i)1. Upon finding that an employer has violated paragraph (a), the department shall order the employer to:

a. Terminate the employment of all unauthorized aliens; and

b. File a sworn affidavit with the department within 10 calendar days after receipt of the order. The affidavit must state that the employer has corrected such violation by:

(I) Terminating the employment of all unauthorized aliens;

or

(II) Attempting to terminate the employment of all unauthorized aliens but such termination is being challenged in a court of competent jurisdiction.

2. If the employer fails to file the affidavit under subparagraph 1., the department shall order the appropriate agencies to suspend all applicable licenses held by the employer until the affidavit is filed. Notwithstanding any other law, the suspended licenses shall be deemed to have been reinstated upon the filing of the affidavit. During the pendency of any court action or challenge to an E-Verify system determination, the 10-calendar-day period shall be tolled.

3. Licenses subject to suspension under subparagraph 2. include all licenses that are held by the employer that are necessary to operate the employer’s business at the specific location at which the unauthorized alien performed work. If a license is not necessary to operate the employer’s business at such location, but a license is necessary to operate the employer’s business in general, the licenses subject to suspension under subparagraph 2. shall include all licenses held by the employer at the employer’s primary place of business.
(j) Upon finding that a second or subsequent violation of paragraph (a) occurred during a 2-year period, the department shall order the appropriate agencies to suspend, for at least 30 calendar days, all licenses held by the employer that are necessary to operate the employer’s business at the specific location at which the unauthorized alien performed work. If a license is not necessary to operate the employer’s business at such location, but a license is necessary to operate the employer’s business in general, the department shall order the appropriate agencies to suspend, for at least 30 calendar days, all licenses held by the employer at the employer’s primary place of business.

(k)1. An employer registered with and using the E-Verify system may not be held civilly liable in a cause of action for the employer’s:

a. Unlawful hiring of an unauthorized alien if the information obtained from the E-Verify system indicated that the person’s work authorization status was not that of an unauthorized alien; or

b. Refusal to hire a person if the information obtained from the E-Verify system indicated that the person’s work authorization status was that of an unauthorized alien.

2. An employer who in good faith registers with and uses the E-Verify system is considered to have complied with the requirements of 8 U.S.C. s. 1324a(b) and may not be held liable for any damages and shall be immune from any legal cause of action brought by any person or entity, including former employees, for the use of and reliance upon any incorrect information obtained from the E-Verify system, including any
incorrect information obtained as a result of an isolated, sporadic, or accidental technical or procedural failure, when determining final action on a person’s work authorization status.

(l) The department shall maintain a public database containing copies of all orders issued pursuant to this subsection and shall make such information available on its website.

(m) If the department determines that an agency or employer has failed to comply with an order under this subsection, the department may apply to the circuit court for a judicial order directing the agency or employer to comply with such order.

(n) For purposes of this subsection, compliance with paragraph (2)(a) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien in violation of paragraph (a).

(4) INJUNCTION.—At any time after the department has notified an employer that a valid complaint of a violation of paragraph (3)(a) was received, and up to 30 calendar days after the date on which the department issues an order pursuant to paragraph (3)(i), the employer subject to the complaint, or any employee who is alleged to be an unauthorized alien, may challenge and seek to enjoin the enforcement of this section before a court of competent jurisdiction.

(5) DECEPTIVE AND UNFAIR TRADE PRACTICE.—

(a) An employer commits a deceptive and unfair trade practice in violation of part II of chapter 501, Florida Statutes, if it discharges an employee who is a United States citizen or resident alien, as defined in s. 379.101(31), Florida
4-00560-19  2019164

Statutes, while knowingly employing an unauthorized alien at the same job site or in the same job classification elsewhere in this state.

(b) The discharged employee has a private cause of action against the employer for a violation of this subsection. The available remedies to the discharged employee are reinstatement, back pay, court costs, and attorney fees. Criminal or civil sanctions, including fines, may not be imposed against an employer for a violation of this subsection.

(c) A cause of action under this subsection does not exist against an employer who, on the date it discharged an employee as described in paragraph (a), was registered with and used the E-Verify system to verify a person’s work authorization status.

(6) CONSTRUCTION.—This section shall be enforced without regard to race, color, or national origin and shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations.

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

287.137 Verification of work authorization status; public employers.—

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

(a) “Contractor” means a person or entity that has entered into, or is attempting to enter into, a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

(b) “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the
employment eligibility of newly hired employees.

(c) “Public employer” means a department, agency, or political subdivision of this state that enters into, or attempts to enter into, a contract with a contractor.

(d) “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

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

(2)(a) Every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all new employees.

(b) A public employer, contractor, or subcontractor may not enter into a contract under this section unless each party to the contract registers with and uses the E-Verify system.

(3)(a) If a contractor enters into a contract with a subcontractor, the subcontractor shall certify to the contractor in a manner that does not violate federal law that the subcontractor, at the time of such certification, does not employ, contract, or subcontract with an unauthorized alien.

(b) A contractor shall maintain a copy of such certification for the duration of the contract with the subcontractor.

(4)(a) A public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is
contracting has knowingly violated this section shall terminate the contract with the person or entity.

(b) A public employer that has a good faith belief that a subcontractor knowingly violated this section, but the contractor otherwise complied with this section, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

(c) A contract terminated pursuant to paragraph (a) or paragraph (b) is not a breach of contract and may not be considered as such.

(d) A public employer, contractor, or subcontractor may file an action with a circuit or county court to challenge a termination under paragraph (a) or paragraph (b) no later than 20 calendar days after the date on which the contract was terminated.

(e) If a public employer terminates a contract with a contractor pursuant to paragraph (a), the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated.

(5) This section shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations.

Section 3. This act shall take effect July 1, 2019.