

By Senator Gruters

23-01889-20

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1 A bill to be entitled
2 An act relating to the verification of employment
3 eligibility; amending s. 448.09, F.S.; providing
4 definitions; requiring public employers, contractors,
5 and subcontractors to register with and use the E-
6 Verify system; prohibiting such entities from entering
7 into a contract unless each party to the contract
8 registers with and uses the E-Verify system; requiring
9 a subcontractor to provide a contractor with a certain
10 affidavit; requiring a contractor to maintain a copy
11 of such affidavit; authorizing the termination of a
12 contract under certain conditions; providing that such
13 termination is not a breach of contract; authorizing a
14 challenge to such termination; requiring private
15 employers to verify the employment eligibility of
16 newly hired employees, beginning on a specified date;
17 providing an exception; providing acceptable methods
18 for verifying employment eligibility; requiring a
19 private employer to provide a public employer with a
20 certain affidavit in order to bid on or otherwise
21 contract with the public employer; authorizing the
22 termination of a contract under certain conditions;
23 providing that such termination is not a breach of
24 contract; providing certain liability if a contract is
25 terminated; providing specified immunity and
26 nonliability for private employers; creating a
27 rebuttable presumption for private employers;
28 providing construction; providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 448.09, Florida Statutes, is amended to
33 read:

34 448.09 Unauthorized aliens; employment prohibited.—

35 (1) EMPLOYMENT ELIGIBILITY.—It is ~~shall be~~ unlawful for any
36 person or entity to knowingly ~~to~~ employ, hire, recruit, or
37 refer, either for herself or himself or on behalf of another,
38 for private or public employment within the state, an alien who
39 is not duly authorized to work by the immigration laws or the
40 Attorney General of the United States.

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

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

46 (b) “Employee” means a person filling an authorized and
47 established position who performs labor or services for a public
48 or private employer in exchange for salary, wages, or other
49 remuneration.

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

54 (d) “Legal alien” means a person who is or was lawfully
55 present or permanently residing legally in the United States and
56 allowed to work at the time of employment and remains so
57 throughout the duration of that employment.

58 (e) “Private employer” means a person or an entity that

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59 employs persons to perform labor or services in exchange for
60 salary, wages, or other remuneration. The term does not include:

61 1. A public employer;

62 2. The occupant or owner of a private residence who hires:

63 a. Casual labor, as defined in s. 443.036, to be performed
64 entirely within the private residence; or

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

68 3. An employee leasing company licensed under part XI of
69 chapter 468 that enters into a written agreement or
70 understanding with a client company which places the primary
71 obligation for compliance with this section upon the client
72 company. In the absence of a written agreement or understanding,
73 the employee leasing company is responsible for compliance with
74 this section. Such employee leasing company shall, at all times,
75 remain an employer as otherwise defined in federal laws or
76 regulations.

77 (f) "Public employer" means an agency within state,
78 regional, county, local, or municipal government, whether
79 executive, judicial, or legislative, or any public school,
80 community college, or state university that employs persons who
81 perform labor or services for that employer in exchange for
82 salary, wages, or other remuneration or that enters or attempts
83 to enter into a contract with a contractor.

84 (g) "Subcontractor" means a person or an entity that
85 provides labor, supplies, or services to or for a contractor or
86 another subcontractor in exchange for salary, wages, or other
87 remuneration.

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

93 (3) PUBLIC EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS.—

94 (a) Beginning January 1, 2021, every public employer,
95 contractor, and subcontractor shall register with and use the E-
96 Verify system to verify the work authorization status of all
97 newly hired employees. A public employer, contractor, or
98 subcontractor may not enter into a contract unless each party to
99 the contract registers with and uses the E-Verify system.

100 (b)1. If a contractor enters into a contract with a
101 subcontractor, the subcontractor must provide the contractor
102 with an affidavit stating that the subcontractor does not
103 employ, contract with, or subcontract with an unauthorized
104 alien.

105 2. The contractor shall maintain a copy of such affidavit
106 for the duration of the contract.

107 (c)1. A public employer, contractor, or subcontractor who
108 has a good faith belief that a person or an entity with which it
109 is contracting has knowingly violated subsection (1) shall
110 terminate the contract with the person or entity.

111 2. A public employer that has a good faith belief that a
112 subcontractor knowingly violated this subsection, but the
113 contractor otherwise complied with this subsection, shall
114 promptly notify the contractor and order the contractor to
115 immediately terminate the contract with the subcontractor.

116 3. A contract terminated under subparagraph 1. or

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117 subparagraph 2. is not a breach of contract and may not be
118 considered as such.

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

123 (e) If a public employer terminates a contract with a
124 contractor under paragraph (c), the contractor may not be
125 awarded a public contract for at least 1 year after the date on
126 which the contract was terminated.

127 (4) PRIVATE EMPLOYERS.—

128 (a) Beginning January 1, 2021, a private employer shall,
129 after making an offer of employment which has been accepted by a
130 person, verify such person's employment eligibility. A private
131 employer is not required to verify the employment eligibility of
132 a continuing employee hired before January 1, 2021. However, if
133 a person is a contract employee retained by a private employer,
134 the private employer must verify the employee's employment
135 eligibility upon the renewal or extension of his or her
136 contract.

137 (b) A private employer shall verify a person's employment
138 eligibility by:

- 139 1. Using the E-Verify system; or
140 2. Requiring the person to provide a picture identification
141 card that complies with the Real ID Act of 2005, Pub. L. No.
142 109-13, and a certified copy of one of the following documents:
143 a. A United States birth certificate;
144 b. A certificate of naturalization;
145 c. A certificate of citizenship;

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146 d. An alien registration receipt card; or

147 e. A United States immigration form I-94 stamped to
148 indicate "employment authorized."

149
150 The private employer must retain a copy of the documents
151 provided under this subparagraph for at least 3 years after the
152 person's initial date of employment.

153 (c) A private employer may not bid on or otherwise contract
154 with a public employer for the performance of labor or services
155 in this state unless the private employer provides the public
156 employer with an affidavit stating that:

157 1. The private employer is registered with and uses the E-
158 Verify system to verify that all newly hired employees are legal
159 citizens of the United States or legal aliens.

160 2. The private employer will continue to use the E-Verify
161 system to verify the employment eligibility of all newly hired
162 employees for the duration of the contract.

163 3. The private employer requires all subcontractors to
164 provide an affidavit stating compliance with subparagraphs 1.
165 and 2.

166 (d)1. A private employer that violates this subsection may
167 be subject to termination of its public contract, if applicable,
168 and may not be awarded a public contract for at least 1 year
169 after the date on which the contract was terminated. The
170 termination of the contract is not a breach of contract and may
171 not be considered as such.

172 2. A private employer is liable for any additional costs
173 incurred by the public employer as a result of the termination
174 of the contract.

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175 (e) A private employer that complies with this subsection
176 may not be held civilly or criminally liable under state law for
177 hiring, continuing to employ, or refusing to hire an
178 unauthorized alien if the information obtained under paragraph
179 (b) indicates that the person's work authorization status was
180 not that of an unauthorized alien.

181 (f) For purposes of this subsection, compliance with
182 paragraph (b) creates a rebuttable presumption that a private
183 employer did not knowingly employ an unauthorized alien in
184 violation of subsection (1).

185 (5)-(2) PENALTIES.-

186 (a) The first violation of subsection (1) is shall be a
187 noncriminal violation as defined in s. 775.08(3) and, upon
188 conviction, is shall be punishable as provided in s. 775.082(5)
189 by a civil fine of not more than \$500, regardless of the number
190 of unauthorized aliens with respect to whom the violation
191 occurred.

192 (b)-(3) Any person who has been previously convicted for a
193 violation of subsection (1) and who thereafter violates
194 subsection (1) commits, shall be guilty of a misdemeanor of the
195 second degree, punishable as provided in s. 775.082 or s.
196 775.083. Any such subsequent violation of this section
197 constitutes shall constitute a separate offense with respect to
198 each unauthorized alien.

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

203 Section 2. This act shall take effect July 1, 2020.