

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1718

INTRODUCER: Senator Ingoglia

SUBJECT: Immigration

DATE: March 14, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula/Stokes /Vickers	Twogood	RC	<b>Pre-meeting</b>
2.	_____	_____	FP	_____

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**I. Summary:**

SB 1718 amends various Florida statutes to address provisions related to individuals in this state who may be unauthorized aliens. Specifically the bill:

- Expands the crime of human smuggling to include concealing, harboring, or shielding a person who has entered the United States illegally from detection;
- Enhances the crime of human smuggling in certain circumstances;
- Allows a law enforcement agency to send relevant information obtained pursuant to enforcement of s. 448.095, F.S., to a federal immigration agency;
- Amends the state's domestic security statutes to provide the necessary authority for the department to coordinate with and provide assistance to the Federal Government in the enforcement of federal immigration laws, and responses to immigration enforcement incidents within or affecting Florida;
- Requires an employer using either the I-9 Form or E-Verify to retain the documentation used for at least 5 years;
- Alters the defenses for employers using I-9 Form or E-Verify;
- Amends the penalties for noncompliance with the employment verification law to allow for the suspension and revocation of licenses in certain circumstances and the imposition of fines;
- Increases the fines associated with violation of laws prohibiting the employment of unauthorized aliens;
- Creates a third degree felony for an unauthorized alien to knowingly use a false identification document, or who fraudulently uses an identification document of another person, to obtain employment;
- Prohibits a county or municipality from providing funds to any person, entity, or organization for the purpose of issuing an identification card or other document to an individual who does not provide proof of lawful presence in the United States;

- Prohibits a person from operating a motor vehicle if his or her driver's license is issued by another state which exclusively provides such a license to undocumented immigrants who are unable to prove lawful presence in the United States when the licenses are issued;
- Provides that certain existing exemptions from obtaining a Florida driver license for nonresidents do not apply for undocumented immigrants;
- Repeals the statute that allows an applicant to the Florida Bar who is an unauthorized immigrant to be admitted to the Bar by the Florida Supreme Court if certain conditions are met;
- Requires a person who is in the custody of a law enforcement agency and is subject to an immigration detainer to submit a DNA sample when he or she is booked into a jail, correctional, or juvenile facility;
- Requires any hospital that accepts Medicaid to include a question on its admission or registration forms inquiring about whether the patient is a United States citizen, is lawfully present in the United States, or is not lawfully present in the United States; and
- Requires each hospital to provide a quarterly report to the Agency of Health Care Administration, detailing the number of visits or admissions by patients who responded to the above question in each category.

The bill is expected to have a significant, negative fiscal impact to the Department of Economic Opportunity. The bill is not expected to have a significant fiscal impact on other state agencies or local governments.

The bill is effective July 1, 2023.

## II. Present Situation:

### General Overview

The Federal Government is responsible for both establishing and enforcing immigration laws. Congress has enacted legislation, which the federal courts have interpreted, and the body of immigration law has developed. The responsibility for enforcing immigration laws rests with the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and its Enforcement and Removal Operations. It is the mission of Enforcement and Removal Operations to identify, apprehend, and remove aliens who are a risk to national security or public safety, enter the country illegally, or seek to undermine the integrity of the country's immigration laws or border control efforts.<sup>1</sup>

In federal fiscal year 2020, the U.S. Border Patrol and Office of Field Operations had 646,822 enforcement actions for the year; in 2021, that total increased to over 1.9 million actions, an increase of over 200 percent. The total enforcement actions in federal fiscal year 2022 was about 2.8 million, another 41 percent increase, and to date for 2023, the total is already over 1 million. These statistics include individuals "encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an

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<sup>1</sup> U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, available at <https://www.ice.gov/ero> (last visited March 10, 2023).

application for admission and return to their countries of origin within a short timeframe.” The total also includes encounters that led to apprehensions or expulsions; apprehensions refer to individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.<sup>2</sup>

In addition to the dramatic increase in border encounters, the recidivism rate has also increased. “Recidivism refers to percentage of individuals apprehended more than one time by the Border Patrol within a fiscal year.” In federal fiscal year 2019, the rate was only 7 percent. However, that climbed to an increase of 26 percent in federal fiscal year 2020 and 27 percent in federal fiscal year 2021.<sup>3</sup>

Encounters with criminal noncitizens were:

<b>FFY 2020</b>	<b>FFY 2021</b>	<b>FFY 2022</b>	<b>FFY 2023 to date</b>
9,447	17,330	29,021	9,445

“Criminal noncitizens refers to noncitizens who have been convicted of crime, whether in the United States or abroad, so long as the conviction is for conduct which is deemed criminal by the United States.”<sup>4</sup>

The Governor has issued two Executive Orders attempting to address the enforcement of immigration laws and the immigration crisis the state has on its borders.<sup>5</sup>

On September 28, 2021, the Governor issued Executive Order No. 21-223, Biden Border Crisis. Finding that the detrimental effects of an unsecured southwest border of the United States would reverberate beyond border states, including increased crime, such as drug trafficking and human trafficking and smuggling, diminished economic opportunities for American workers, and stresses on education and healthcare systems. The order prohibited state agencies from assisting with the transport of aliens apprehended at the southwest border into Florida; and required state agencies to use the federal Systematic Alien Verification for Entitlements program to confirm the eligibility of persons before providing any funds, resources, or other benefits. The order specifically:

- Directs the Florida Department of Law Enforcement (FDLE) and the Florida Highway Patrol to determine on an ongoing basis the number and identities of all illegal aliens<sup>6</sup> whom the DHS, as well as any other federal departments or agencies, federal contractors, or affiliated non-governmental organizations, transport to Florida and to detain any

<sup>2</sup> U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2023*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited March 11, 2023). The federal fiscal year is October to September.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See State of Florida, Office of the Governor, *Executive Order No. 21-223*, September 28, 2021, available at [https://www.flgov.com/wp-content/uploads/2021/09/EO\\_21-223.pdf](https://www.flgov.com/wp-content/uploads/2021/09/EO_21-223.pdf) (last visited March 10, 2023) and State of Florida, Office of the Governor, *Executive Order No. 23-03*, January 6, 2023, available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-03.pdf> (last visited March 10, 2023).

<sup>6</sup> Defined in the order to have the same meaning as under 8 U.S.C. s. 1101(a)(3); except that the order specified that lawful immigration status does not include parole under 8 U.S.C. s. 1182(d)(5).

aircraft, bus, or other vehicle used to transport illegal aliens to the state in the commission of a state offense, including state laws against human trafficking.

- Requests state attorneys and statewide prosecutor to report monthly to the Governor's Office and the FDLE on information related to illegal aliens and crimes, which the department was to make available on its website.
- Directs the Agency for Health Care Administration (AHCA), in coordination with the Department of Children and Families, the Department of Health, and county health departments, to use all lawful means to determine the amount of state and local funds spent on health care, including emergency care, for illegal aliens each fiscal year. The AHCA was also directed to require managed care plans and hospitals to report any Medicaid or other governmental expenditures incurred for illegal aliens for each fiscal year beginning in 2021. Such information was to be made available to the Governor's Office and posted on the websites for the AHCA and the Department of Health.
- Directs the Department of Children and Families to determine the amount and purpose of state funds expended by the department on illegal aliens for each fiscal year. Such information was to be made available to the Governor's Office and posted on the website for the department. The department was also directed to review resettlement of unaccompanied alien children<sup>7</sup> in Florida and make determinations on resettlement under state laws; to the extent that such resettlement did not constitute "evidence of need" under Florida law, the department was directed to not grant or renew licenses to family foster homes, residential child-caring agencies, or child-placing agencies that applied to house unaccompanied minors and to prohibit these entities from accepting additional children if they already housed unaccompanied alien children. These entities were also required, as a part of licensure, to conduct in-person welfare checks on these children and report to the department, if the department determined that such checks were permitted by state law.
- Directs the FDLE, in consultation with the Attorney General, to conduct regular audits of businesses in Florida to ensure that businesses were complying with state law to verify the employment eligibility of new employees. The department was ordered to prioritize audits of publicly traded corporations or companies with more than 200 employees that operate in sectors of the economy known for employing illegal aliens. If any violation was found, the department was to notify the Department of Economic Opportunity (DEO) to take appropriate action under state law.
- Requires any executive agency to report any evidence found of a crime perpetrated by an illegal alien to the FDLE; and to take all appropriate action under state law, including the imposition of fines or revocation of licenses, of any violation of law by a private contractor or non-governmental organization involved in the resettlement of illegal aliens.<sup>8</sup>

On January 6, 2023, the Governor issued Executive Order No. 23-03, Emergency Management – Illegal Migration. Based on findings of unprecedented interdictions, attempts of entry, and border patrol encounters, the Governor designated the migration of unauthorized aliens to Florida as likely to constitute a major disaster and designated the director of the Division of Emergency Management as the state coordinating officer for the disaster with direction to

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<sup>7</sup> Defined in the order to have the same meaning as under 6 U.S.C. s. 279(g)(2).

<sup>8</sup> State of Florida, Office of the Governor, *Executive Order No. 21-223*, September 28, 2021, available at [https://www.flgov.com/wp-content/uploads/2021/09/EO\\_21-223.pdf](https://www.flgov.com/wp-content/uploads/2021/09/EO_21-223.pdf) (last visited March 10, 2023)

execute response, recovery, and mitigation plans necessary to cope with the emergency. The order also activates the Florida National Guard, as needed, to assist with the efforts. The order waives contracting policies and requirements, allows for expenditure of state funds through the Emergency Preparedness and Response Fund, and authorizes medical professionals, social workers, and counselors with good and valid licenses issued by other states to provide humanitarian aid services.<sup>9</sup>

### **Federal Immigration Law**

The federal government has broad power over immigration and alien status.<sup>10</sup> This broad power is enforced through an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States, including the Immigration and Nationality Act.<sup>11</sup> While the federal government's authority over immigration is well established, the United States Supreme Court has recognized that not "every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted" by the federal government.<sup>12</sup>

### **Human Smuggling**

It is estimated that there are 3 million illegal entries into the United States each year, over and above the amount of encounters that the U.S. Border Patrol has with border-crossers. Full-time professional criminals are facilitating the smuggling of immigrants across the border which generates over \$6.75 billion a year from human smuggling.<sup>13</sup> Federal law governs whether a person is legally authorized to enter or remain in this country and provides criminal penalties for illegally transporting a person into the country. Specifically, 8 U.S.C. s. 1324 provides criminal penalties for any person who:

- Knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner of Immigration and Naturalization, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;
- Knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports or moves or attempts to transport or move such alien within the United States, by means of transportation or otherwise, in furtherance of such violation of law;
- Knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or

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<sup>9</sup> State of Florida, Office of the Governor, *Executive Order No. 23-03*, January 6, 2023, available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-03.pdf> (last visited March 10, 2023).

<sup>10</sup> *Arizona v. United States*, 567 U.S. 387 (2012).

<sup>11</sup> 8 U.S.C. s. 1108, et seq.

<sup>12</sup> *De Canas v. Bica*, 424 U.S. 351, 355 (1976).

<sup>13</sup> United Nations Office on Drugs and Crime, *Transnational Organized Crime: Let's put them out of business*, available at <https://www.unodc.org/toc/en/crimes/migrant-smuggling.html> (last visited March 10, 2023).

- Encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.<sup>14</sup>

Before 2009, Florida law did not specifically provide criminal penalties for transporting a person into the state who is illegally entering or remaining in the United States. In 2009, the Florida Legislature created s. 787.07, F.S., providing criminal penalties for human smuggling.<sup>15</sup> Currently, s. 787.07, F.S., provides it is a third degree felony<sup>16</sup> for a person to transport an individual into this state, when the person, who is doing the transporting, knows or should know that the person he or she is transporting is illegally entering the United States from another country.

### **Federal Immigration Enforcement**

In 2019, the Legislature passed federal immigration enforcement legislation.<sup>17</sup> The act sought to ensure that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the law prohibits sanctuary policies and requires law enforcement agencies to support the enforcement of federal immigration law.<sup>18</sup> When local law enforcement agencies work with federal immigration officials, aliens who have committed serious crimes are more easily identified and removed.

Specifically, s. 908.104(2), F.S., allows a law enforcement agency<sup>19</sup> to take the following actions with respect to information regarding a person's immigration status:

- Sending the information to or requesting, receiving, or reviewing the information from a federal immigration agency for purposes of ch. 908, F.S.
- Recording and maintaining the information for purposes of ch. 908, F.S.
- Exchanging the information with a federal immigration agency or another state entity, local governmental entity, or law enforcement agency for purposes of ch. 908, F.S.
- Using the information to comply with an immigration detainer.
- Using the information to confirm the identity of a person who is detained by a law enforcement agency.

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<sup>14</sup> 8 U.S.C. s. 1324(a).

<sup>15</sup> Chapter 2009-160, L.O.F.

<sup>16</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>17</sup> Chapter 2019-102, L.O.F. The law was challenged in *City of South Miami v. DeSantis*, 408 F.Supp.3d 1266 (S.D. Fla. Sept. 21, 2021). Three provisions were enjoined but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and is now pending.

<sup>18</sup> See ch. 908, F.S.

<sup>19</sup> Section 908.102(4), F.S., defines a "law enforcement agency" to mean an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in this state and includes municipal police departments, sheriffs' offices, state police departments, state university and college police departments, county correctional agencies, and the Department of Corrections.

## Domestic Security

The mission of the FDLE is to “promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida’s citizens and visitors.”<sup>20</sup>

FDLE’s Executive Director serves as the Chief of Domestic Security in Florida and oversees Office of Domestic Security. The office works with federal, state, and local officials to prepare for, prevent, protect, respond to, and recover from domestic security incidents within or affecting the state.<sup>21</sup>

There are three primary components to Florida’s domestic security governance structure: the regional domestic security task forces, the domestic security coordinating group, and the domestic security oversight council.<sup>22</sup>

The regional domestic security task forces consist of local and multi-disciplinary representatives who collectively support the domestic security mission and provide the necessary link between the state and local communities. There are seven regional domestic security task forces located in Pensacola, Tallahassee, Jacksonville, Orlando, Tampa, Ft. Myers, and Miami.<sup>23</sup>

Regional domestic security task forces advise the FDLE and the Chief of Domestic Security on the development and implementation of a statewide strategy to address prevention, preparation, protection, response, and recovery efforts related to the state’s domestic security. The task forces also coordinate the resources of local, state, and federal to ensure that such efforts are not fragmented and duplicative.<sup>24</sup>

The domestic security coordinating group (DSCG) provides the structure for federal, state, and local response to domestic security incidents. The DSCG is made up of representatives and subject matter experts from the regional domestic security task forces, designated urban areas, other key organization liaisons and private sector representatives who come together to address domestic security incidents.<sup>25</sup>

The domestic security oversight council was established in 2004 to provide direction, leadership, and recommendations to the Governor and the Legislature on domestic security.<sup>26</sup> The council’s membership is made up of voting and nonvoting members. Voting members include but are not limited to the Executive Director of the Division of Emergency Management, the Attorney General, and the Adjutant General of the Florida National Guard. Nonvoting membership includes but is not limited to, the Executive Director of the Department of Highway Safety and

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<sup>20</sup> Florida Department of Law Enforcement, FDLE Home, *About FDLE*, available at <https://www.fdle.state.fl.us/About-Us> (last visited March 10, 2023).

<sup>21</sup> Section 943.0311(1), F.S.

<sup>22</sup> Florida Department of Law Enforcement, FDLE Home, Domestic Security, Domestic Security Organization, *Organization*, available at <http://www.fdle.state.fl.us/Domestic-Security/Organization.aspx> (last visited March 10, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> Section 943.0312, F.S.

<sup>25</sup> 2021 Domestic Security Annual Report, *Making Florida Safer*, p. 3, available at <https://www.fdle.state.fl.us/Domestic-Security/Documents/2021DSAnnualReportFINAL.aspx> (last visited March 10, 2023).

<sup>26</sup> *Id.*

Motor Vehicles, a representative of the United States Coast Guard, and a special agency in charge from an office of the Federal Bureau of Investigations within Florida.<sup>27</sup>

The council duties include providing guidance to the regional domestic security task forces and the DSCG with respect to statewide policies and operational protocols that support domestic security efforts. The council must also review statewide or multiagency mobilizations and responses to major domestic security incidents and recommend suggestions for training, improvement of response efforts, or improvement of coordination within the state.<sup>28</sup>

## Employment Verification

### *Federal Law – I-9 Form and E-Verify*

Under the Immigration Reform and Control Act of 1986 (IRCA),<sup>29</sup> it is illegal for any United States employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the IRCA.<sup>30</sup>

The employment verification process begins when an employee accepts an offer of employment.<sup>31</sup> Between this point and the employee's first day on the job, an *employee* must present documents that establish his or her identity and eligibility to work<sup>32</sup> by completing Section 1 of the Form I-9, which requires the employee's name, address, social security number (SSN), and citizenship status under penalty of perjury.<sup>33</sup>

By the end of the third day on the job, the *employer* is required to complete Section 2, which states under penalty of perjury that certain employee-provided documents that establish the employee's eligibility were reviewed.<sup>34</sup> Most employers are not required to continue the verification of employment eligibility process beyond this step. However, for those who choose to use or are required to use E-Verify, the process continues.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),<sup>35</sup> which, among other provisions, created various employment eligibility verification programs, including the Basic Pilot program, now referred to as E-Verify. E-Verify is an Internet-based system through which an employer can verify that a newly hired employee is

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<sup>27</sup> Section 943.0313(1), F.S.

<sup>28</sup> Section 943.0313(5), F.S.

<sup>29</sup> Public Law 99-603, 100 Stat. 3359.

<sup>30</sup> 8 U.S.C. s. 1324a.

<sup>31</sup> U.S. Citizenship and Immigration Services, *Complete and Correct Form I-9*, available at <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9> (last visited March 11, 2023).

<sup>32</sup> An employer may rely on a U.S. passport; resident alien card, alien registration card, or other document designated by the U.S. Attorney General that contains a photograph and other personal identifying information, authorizes employment in the U.S., and is tamper resistant. Alternatively, an employer may review a combination of documents that establish the individual's identity, e.g., a SSN, and a document that establishes the individual's identity, e.g., a driver's license.

<sup>33</sup> See 8 C.F.R. § 274a.2(b)(1)(i)(A).

<sup>34</sup> 8 U.S.C. s. 1324a. See 8 C.F.R. § 274a.2(b)(1)(ii).

<sup>35</sup> Public Law 104-208.



authorized to work in the United States. E-Verify is operated by the USICS in partnership with the Social Security Administration (SAA). It is free for employers to use and provides an automated link to Government records to help employers confirm the employment eligibility of new hires.<sup>36</sup>

Originally, the program was available in five of the seven states that had the highest populations of unauthorized aliens and was initially authorized for only 4 years. However, Congress has consistently extended the program's life. It expanded the program in 2004, making it available in all 50 states. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.<sup>37</sup> As of December 31, 2022, there were 1,093,292 employers enrolled in the system with a usage rate of 16.51 percent and a total of 296,690 case checks for the calendar year. As of March 2023, Florida accounts for 81,511 employer accounts with 66,385 actively enrolled employers.<sup>38</sup>

The employer opens a “case” for the employee on the E-Verify system and enters basic information from the employee's Form I-9 (name, address, SSN) into the case.<sup>39</sup> Then, the E-Verify system checks the submitted information to records that are available to the DHS and SSA, and issues one of several possible results to the employer:

- **Employment Authorized** - The employee's information matched records available to the DHS and/or SSA.
- **E-Verify Needs More Time** - This case was referred to the DHS for further verification.
- **Tentative Nonconfirmation (Mismatch)** - Information did not match records available to the DHS and/or SSA. Additional action is required.
- **Case in Continuance** - The employee has contacted the DHS or visited an SSA field office, but more time is needed to determine a final case result.
- **Close Case and Resubmit** – The DHS or SSA requires that the employer to close the case and create a new case for the employee. This result may be issued when the employee's United States passport, passport card, or driver's license information is incorrect.
- **Final Nonconfirmation** - E-Verify cannot confirm the employee's employment eligibility after the employee contacted the DHS or SSA, the time for resolving the case expired, or the DHS closed the case without confirming the employee's employment eligibility for some other reason.<sup>40</sup>

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<sup>36</sup> U.S. Citizenship and Immigration Services, *How do I use E-Verify?* available at <https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf> (last visited March 11, 2023).

<sup>37</sup> E-Verify, *History and Milestones*, available at <https://www.e-verify.gov/about-e-verify/history-and-milestones> (last visited March 11, 2023).

<sup>38</sup> E-Verify, *E-Verify Usage Statistics*, click “Show the Data Table” for a download csv, available at <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-usage-statistics> and *How To Find Participating Employers*, for a list of Florida employers, available at [https://www.e-verify.gov/about-e-verify/e-verify-data/how-to-find-participating-employers?hiringstates\[\]=11&field\\_account\\_status\\_value=All&items\\_per\\_page=10](https://www.e-verify.gov/about-e-verify/e-verify-data/how-to-find-participating-employers?hiringstates[]=11&field_account_status_value=All&items_per_page=10) (last visited March 11, 2023).

<sup>39</sup> E-Verify, *Verification Process*, for details on how the system works, available at <https://www.e-verify.gov/employers/verification-process> (last visited March 11, 2023). Before using E-Verify, an employer must enroll and sign a Memorandum of Understanding that provides the terms of agreement between the employer and the DHS. See E-Verify, *The E-Verify Memorandum of Understanding for Employers*, available at <https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf> (last visited March 11, 2023).

<sup>40</sup> *Id.*

If the result is Tentative Nonconfirmation, then the employer must notify the employee, who must take further action to verify his or her eligibility. If the result is E-Verify Needs More Time or Case in Continuance, then the E-Verify system needs more time to process the case.<sup>41</sup>

### ***Defenses for Employers***

An employer using the I-9 Form, establishing good faith compliance with the law, has established an affirmative defense that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring.<sup>42</sup>

An employer taking the additional steps to use the E-Verify system to verify employment eligibility may establish a rebuttable presumption that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring.<sup>43</sup>

The IRCA provides sanctions to be imposed on employers who knowingly employ aliens who are not authorized to work.<sup>44</sup> Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.<sup>45</sup> The United States Citizenship and Immigration Services (USCIS) enforces these provisions.<sup>46</sup>

### ***E-Verify Results in Federal Fiscal Year 2022***<sup>47</sup>

In federal fiscal year 2022, E-Verify processed 48,042,413 cases, 98.43 percent of which were automatically confirmed as “work authorized.” Another 1.61 percent were confirmed after an initial “mismatch” and of these 1.54 percent were ultimately found to be not work authorized.<sup>48</sup>

In the remaining 1.54 percent of cases, the employees were not found to be authorized to work in the United States. The majority of these were cases that were not resolved by the end of Fiscal Year 2019 for various reasons, including because the case was awaiting further action by either the employer or employee at the end of the fiscal year or because the employer closed the case as “self-terminated.”<sup>49</sup>

### ***E-Verify Operational Disturbances***

During the January 2019 partial federal government shut down, the E-Verify system was unavailable. As a result, employers were unable to enroll in E-Verify, contact customer support representatives, create an E-Verify case, or view or take action on a case, among other functions.<sup>50</sup> The DHS issued guidance that extended the 3-day rule to permit employers

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<sup>41</sup> *Id.*

<sup>42</sup> 8 U.S.C. s. 1324a(a)(3).

<sup>43</sup> 8 U.S.C. s. 1324a notes, *Pilot Programs for Employment Eligibility Confirmation*.

<sup>44</sup> 8 U.S.C. s. 1324a(a)(1)-(2).

<sup>45</sup> 8 U.S.C. s. 1324c.

<sup>46</sup> 8 U.S.C. s. 1324a.

<sup>47</sup> E-Verify, *E-Verify Performance*, available at <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance> (last visited March 11, 2023).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> National Law Review, *When the Government Shuts Down: The Impact on E-Verify, I-9's, and Visas*, January 25, 2019, available at <https://www.natlawreview.com/article/when-government-shuts-down-impact-e-verify-i-9-s-and-visas> (last visited March 11, 2023).

additional time to submit new employee information to E-Verify and gave employees additional time to resolve a case.<sup>51</sup>

### ***Florida Law***

Public employers and their contractors, and subcontractors thereof, are required to register and use E-Verify to verify the work authorization status of all newly hired employees.<sup>52</sup>

A private employer that transacts business in Florida, has a license issued by an agency,<sup>53</sup> and employs workers in Florida is required to use the I-9 Form or E-Verify or a substantially equivalent system to verify that new hires or retained contract employees are authorized to work in the United States.<sup>54</sup> If the employer uses the I-9 system, the employer must retain a copy of the documentation for at least 3 years after the individual's initial date of employment.<sup>55</sup>

A private employer that complies with the law may not be held civilly or criminally liable under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien if the information obtained indicated that the individual's work authorization status was not that of an unauthorized alien. Further, using either the I-9 Form or E-Verify creates a rebuttable presumption that the private employer did not knowingly employ an unauthorized alien.<sup>56</sup>

A person may not knowingly employ, hire, recruit, or refer an alien for private or public employment within the state if the alien is not authorized to work under "the immigration laws" or by the United States Attorney General.<sup>57</sup> A first offense of this prohibition is a noncriminal violation punishable by a fine of up to \$500, regardless of the number of aliens with respect to which the violation occurred; each subsequent offense is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500, with each unauthorized alien employed as a separate violation.<sup>58</sup>

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<sup>51</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *E-Verify Resumes Operation*, January 27, 2019, available at <https://www.e-verify.gov/e-verify-resumes-operation> (last visited March 11, 2023). Due to the lapse in federal funding, the E-Verify system was not in operation from December 22, 2018, to January 26, 2019. E-Verify restarted on Sunday, January 27, 2019. Department of Homeland Security, U.S. Citizenship and Immigration Services, *January 2019, E-Verify Incidents*, April 23, 2019, available at <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-enhancements/january-2019> (last visited March 11, 2023).

<sup>52</sup> Section 448.095(2), F.S. This section was enacted in 2020. Previously, pursuant to Executive Order 11-116, state agencies under the direction of the Governor were required to use E-Verify for all newly hired employees. The order also required an agency to include a provision in contracts to require a contractor (and any subcontractors thereof) to use E-Verify for all new hires for the duration of the contract. State of Florida, Office of the Governor, *Executive Order No. 11-116*, May 27, 2011, available at <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-116-suspend.pdf> (last visited March 11, 2023).

<sup>53</sup> Defined in s. 448.095(1)(g) as a permit, a certificate, an approval, a registration, a charter, or any 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, an article of incorporation; a certificate of partnership, a partnership registration, or an article of organization; a grant of authority issued pursuant to state or federal law; or a transaction privilege tax license.

<sup>54</sup> A private employer does not include a public employer, an employee leasing company that has a written agreement or understanding with its client company that places the primary obligation for compliance with this section upon the client company; or an occupant or owner of a private residence that hires casual labor or a licensed independent contractor. Section 448.095(3), F.S.

<sup>55</sup> Section 448.095(3), F.S.

<sup>56</sup> *Id.*

<sup>57</sup> Section 448.09(1), F.S.

<sup>58</sup> Section 448.09(2), F.S. *See* ss. 775.082 and 775.083, F.S.

The FDLE, the Attorney General, a state attorney, or the statewide prosecutor is authorized to request documentation from a private employer used to verify an individual's employment eligibility. Ultimately, the federal government's determination of verification of an individual's employment status stands and one of the authorized state agencies may not make an independent determination as to whether a person is an unauthorized alien.<sup>59</sup>

A private employer that does not use the I-9 Form or E-Verify, or does not maintain the I-9 Form documentation for 3 years, will be required by the DEO to provide an affidavit stating that the private employer will comply with the law, has terminated the employment of all unauthorized aliens in this state, and will not intentionally or knowingly employ an unauthorized alien in this state.<sup>60</sup>

If the private employer does not provide the required affidavit within 30 days after the request by the DEO, the appropriate licensing agency<sup>61</sup> must suspend all applicable licenses held by the private employer until the private employer provides the DEO with the required affidavit. If a private employer does not provide the required affidavit within the required time period three times within any 36-month period, then the appropriate licensing agency must revoke all applicable licenses held by the private employer. The licenses subject to suspension or revocation are:

- All licenses that are held by the private employer specific to the business location where the unauthorized alien performed work.
- If the private employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the private employer's business in general, then the provision apply to all licenses that are held by the private employer at the private employer's primary place of business.<sup>62</sup>

### ***Mandatory Use of E-Verify in Other States***

At least 19 other states require the use of E-Verify by public employers, contractors or subcontractors of public employers, or private employers.

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<sup>59</sup> Section 448.095(3), F.S.

<sup>60</sup> *Id.*

<sup>61</sup> The term "agency" means any agency, department, board, or commission of this state or a county or municipality in this state that issues a license to operate a business in this state.

<sup>62</sup> *Id.*

The following states require private employers, as well as public employers and their contractors and subcontractors, to use E-Verify: North Carolina;<sup>63</sup> Mississippi;<sup>64</sup> Georgia;<sup>65</sup> Arizona;<sup>66</sup> Alabama;<sup>67</sup> Utah;<sup>68</sup> and South Carolina.<sup>69</sup>

The following states require only public employers and their contractors to use E-Verify: Indiana;<sup>70</sup> Nebraska;<sup>71</sup> Missouri;<sup>72</sup> Colorado;<sup>73</sup> Oklahoma;<sup>74</sup> Texas;<sup>75</sup> and Virginia.<sup>76</sup>

Some states' approaches do not fall squarely into the above categories. For example, Tennessee requires only private employers that have 50 or more employees to use E-Verify.<sup>77</sup> Pennsylvania requires public contractors and private *construction* employers to use E-Verify.<sup>78</sup> In Michigan, only contractors of the Michigan Department of Transportation must use E-Verify.<sup>79</sup> Finally, West Virginia requires contractors whose employees work on the Capitol grounds to use E-Verify.<sup>80</sup>

### **Community or Municipal Identification Cards**

A local government may issue an identification card (ID card) itself or through partnership with an organization to provide benefits to local residents. An ID card issued by a local government may aid those without state-issued identification to obtain access to services, provide identity, or participate in local programs only open to local residents.

The FaithAction International House has worked with local communities nation-wide to issue community IDs. The goal is to provide ID cards to individuals who may not currently have access to government issued forms of ID, including new immigrants and refugees, homeless and elderly individuals, and those recently returning from jail. "The FaithAction ID provides card holders with a verifiable form of identification that can be used as a tool by law enforcement, health centers, schools, nonprofits, businesses, and cultural arts organizations to better identify,

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<sup>63</sup> N.C.G.S. § 160A-169.1 (municipalities); 153A-99.1 (counties); 143-48.5, 143-133.3 (public contractors); 64-26 (private employers that have more than 25 employees); 126-7.1 (state agencies).

<sup>64</sup> Miss. Code § 71-11-3.

<sup>65</sup> Ga. Code § 13-10-91 (public employers and contractors); 36-60-6 (private employers that have more than 10 employees).

<sup>66</sup> Ariz. Rev. Stat. § 41-4401 (public contractors); 23-214 (private and public employers).

<sup>67</sup> Ala. Code § 31-13-15.

<sup>68</sup> Utah Code § 63G-12-301 (private employers having 15 or more employees, unless the employee has a guest worker permit), 63G-12-302 (public employers and contractors). Under both statutes, the employers may use E-Verify or another federal verification program.

<sup>69</sup> S.C. Code § 41-8-20 (private employers); 8-14-20 (public employers and contractors).

<sup>70</sup> Ind. Code § 22-5-1.7-11.1.

<sup>71</sup> Nev. Rev. St. § 4-114.

<sup>72</sup> Miss. Stat. § 285.530.

<sup>73</sup> Colo. Rev. Stat. § 8-17.5-102.

<sup>74</sup> 25 Okl. St. § 1313 (public employers and contractors must use E-Verify or another federal verification program).

<sup>75</sup> Tex. Nat. Res. Code § 81.072 (public contractors); Tex. Gov. Code § 673.002 (state agencies)

<sup>76</sup> Va. Code § 40.1-11.2 (state agencies), 2.2-4308.2 (public contractors).

<sup>77</sup> Tenn. Code § 50-1-703.

<sup>78</sup> 43 Penn. Stat. § 167.3 (public contractors); 43 Penn. Stat. § 168.3 (private construction employers).

<sup>79</sup> Act 200, Public Acts of 2012, Sec. 381.

<sup>80</sup> W. Va. Code, § 15-2D-3.

serve, and protect them.”<sup>81</sup> FaithAction International House provides that ID card is not a state issued form of identification, which is clearly noted on the back of the card; therefore it cannot be used to vote, does not entitle the cardholder to any social welfare benefits; does not have any impact on an individual’s immigration status. Individuals may pay a small fee for the card, or the card may be issued for free, and must attend an ID drive event that provide an orientation on the benefits and limitations of the card.<sup>82</sup>

In Florida, Miami-Dade County, Broward County, Palm Beach County, and Alachua County have partnered with local organizations to offer a Community ID card.<sup>83</sup> For example, Broward County Legal Aid assists to issue the Community IDs, requiring attendance at an ID drive or an office appointment, where the individual brings documentation such as a passport issued by the individual’s country (expired or current), a foreign national card (expired or current), or other documentation and proof that the individual is a county resident. There is no inquiry into the individual’s immigration status. The cards are geared towards “formerly incarcerated persons, foster youth, transgender persons, the homeless, new immigrants, refugees, or anyone who might face difficulties obtaining a state-issued ID.”<sup>84</sup> The card “helps residents identify themselves to law enforcement, schools, banks, health centers, city departments, and social service agencies.”<sup>85</sup>

Other local governments issue resident ID cards that are conditioned on presentation of a government-issued ID like a valid driver’s license or passport and proof of residency.<sup>86</sup> Cardholders can access discounted rates at fishing piers, city-owned recreational facilities, reduced pricing on programs and activities, and free entrance to certain events. Cards may require a small fee or may be provided for free and require renewal annually or may be valid for up to three years, depending on the locality.

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<sup>81</sup> FaithAction International House, *FaithAction ID Program and Network*, available at <https://faithaction.org/faithaction-id-program-and-network/> (last visited March 11, 2023).

<sup>82</sup> *Id.*

<sup>83</sup> See Branches Trist & Dan Bell Family Empowerment Center, *Miami-Dade Community ID*, available at <https://miamiid.org/>; Broward Legal Aid, *Broward Community ID*, available at <https://www.browardlegalaid.org/communityid/>; Legal Aid Society of Palm Beach County, *Community ID of the Palm Beaches*, available at <https://legalaidpbc.org/2018/05/01/veteran-will-clinic-65/>; Human Rights Coalition of Alachua County, *The HRC Community ID*, available at <https://hrcalachua.com/community-id-program/> (last visited March 11, 2023). The City of Tallahassee approved a Community ID program to be run through the Legal Aid Foundation of Tallahassee in 2021 as a 2-year pilot program; see Tallahassee Democrat, Karl Eters, *Jack Porter's city-funded ID card program approved in 'no bid' deal, but questions remain*, available at <https://www.tallahassee.com/story/news/2021/11/05/tallahassee-city-funded-id-card-program-works/6254350001/> (last visited March 11, 2023).

<sup>84</sup> Broward Legal Aid, *Broward Community ID*, available at <https://www.browardlegalaid.org/communityid/> (last visited March 11, 2023).

<sup>85</sup> *Id.*

<sup>86</sup> City of Aventura, *Aventura ID Card*, available at <https://www.cityofaventura.com/221/Aventura-ID-Card>; City of Delray Beach, *Residency (Activities) Identification Cards*, available at <https://www.delraybeachfl.gov/government/city-departments/city-clerk/residency-identification-cards>; City of Sunny Isles Beach, *Resident ID Card*, available at <https://www.sibfl.net/ccs/residentid/>; The Villages, *Resident ID Card Information*, available at <https://districtgov.org/departments/Community-Service/idCards.aspx> (last visited March 11, 2023).

## **Driver Licenses**

Section 322.03, F.S., prohibits a person from driving any motor vehicle upon a Florida highway unless such person has a valid driver license issued under ch. 322, F.S. However, an individual is exempt from obtaining a Florida driver license if he or she is a nonresident who is:

- At least 16 years of age and possesses a valid noncommercial driver license issued to him or her in his or her home state or country and operating a type of motor vehicle for which a Class E driver license is required in this state.
- At least 18 years of age and possesses a valid noncommercial driver license issued to him or her in his or her home state or country and operating a motor vehicle, other than a commercial motor vehicle, in this state.<sup>87</sup>

Section 322.08, F.S., establishes requirements governing the issuance of driver licenses by the Department of Highway Safety and Motor Vehicles (DHSMV). An applicant for a driver license or identification card is required to provide his or her SSN for the purpose of identification. This information is electronically verified with the federal SSA to confirm identity, as required by the Real ID Act of 2005. Applicants are required to provide proof of identity that is satisfactory to the DHSMV. The following documents constitute acceptable proof of identification:

- A certified copy of a United States birth certificate;
- A valid, unexpired passport or passport card;
- A Certificate of Naturalization issued by the DHS;
- A valid, unexpired alien registration receipt card (green card);
- A Consular Report of Birth Abroad; and
- A valid, employment authorization card issued by the DHSMV.<sup>88</sup>

The DHSMV is authorized to require an applicant for an original driver license to produce certain DHS or foreign documents to prove nonimmigrant classification for the sole purpose of establishing continuous lawful presence in the United States.<sup>89</sup>

Section 322.12, F.S., authorizes the DHSMV to waive the Class E knowledge (written) and skills requirements if an applicant for an original driver license presents a valid driver license from another state, province of Canada, or the United States Armed Forces when applying for a Florida driver license of equal or lesser classification.

### ***Driver License Compact and Reciprocity***

The Driver License Compact was created to provide uniformity among member jurisdictions when exchanging information with other members on convictions, records, licenses, withdrawals, and other data pertinent to the licensing process. Uniformity helps ease administrative costs and meets the underlying tenet of the agreement that each driver nationwide have only one driver license and one driver control record.

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<sup>87</sup> Section 322.04(1)(c) and (d), F.S.

<sup>88</sup> Section 322.08(2)(c), F.S.

<sup>89</sup> Section 322.08(2)(c)8., F.S.

Section 322.02(4), F.S., authorizes the DHSMV to enter into reciprocal driver license agreements with other jurisdictions within the United States and its territories and possessions and with foreign countries or political entities equivalent to Florida state government within a foreign country. Generally, valid driver licenses issued by any state in the United States are valid when visiting another state. However, exceptions do exist for state-specific laws, such as required driving ages.<sup>90</sup>

### ***States Issuing Driver Licenses to Undocumented Immigrants***

States issue driver's licenses under the constitutional authority of the 10th Amendment. In 2005, Congress enacted the Real ID Act, creating standards for state-issued driver's licenses, including evidence of lawful status. Currently, 18 states and the District of Columbia have enacted laws to allow undocumented immigrants to obtain driver's licenses. These states – California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington – issue a license (or a “driving privilege card”) if an applicant provides certain documentation, such as a foreign birth certificate, foreign passport, or consular card and evidence of current residency in the state.<sup>91</sup>

Since 1993, beginning in the State of Washington, states have offered undocumented immigrants the ability to obtain state driver licenses to encourage otherwise unlicensed drivers to pass driver license testing and obtain vehicle insurance.<sup>92</sup>

Following the Real ID Act, noncompliant cards must have a recognizable feature on their face to distinguish the license from those issued to legal residents. Possession of a Real ID compliant driver license is not federally required for operating a motor vehicle. The DHS cautions against assuming that possession of a noncompliant card indicates that an individual is undocumented. Individuals may choose to obtain a noncompliant card for reasons unrelated to lawful presence in the United States.<sup>93</sup>

### **Admission to Practice Law**

In 2014 the Legislature provided that that an applicant to the Florida Bar who is an unauthorized immigrant may be admitted to the Bar by the Florida Supreme Court if certain conditions are met.<sup>94</sup> The Legislature acted following an advisory opinion from the Florida Supreme Court that related to whether undocumented immigrants are eligible for admission to the Florida Bar.<sup>95</sup> The Court held that federal law prohibits specified categories of aliens from obtaining certain public

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<sup>90</sup> FindLaw, *Driver's Licenses FAQ*, November 27, 2017, available at <https://www.findlaw.com/traffic/drivers-license-vehicle-info/driver-s-licenses-faq.html> (last visited March 12, 2023).

<sup>91</sup> National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants*, January 16, 2023, available at <https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants> (last visited March 10, 2023).

<sup>92</sup> Britannica ProCon, *States (and DC) That Allow Undocumented Immigrants to Obtain Driver's Licenses*, November 14, 2022, available at [States \(and DC\) That Allow Undocumented Immigrants to Obtain Driver's Licenses - Immigration - ProCon.org](https://www.procon.org/immigration/states-and-dc-that-allow-undocumented-immigrants-to-obtain-drivers-licenses) (last visited March 12, 2023).

<sup>93</sup> Department of Homeland Security, *Real ID Frequently Asked Questions for the Public*, available at <https://www.dhs.gov/archive/real-id-public-faqs> (last visited March 12, 2023).

<sup>94</sup> Chapter 2014-35, L.O.F.

<sup>95</sup> *Florida Board of Bar Examiners Re: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar*. No. SC11-2568 (March 6, 2014).



benefits, which includes a professional license that is provided by appropriated funds of a state. However, the federal law in question allows a state to provide such a benefit through the enactment of a state law that affirmatively provides for such eligibility.<sup>96</sup>

Section 454.021(3), F.S., allows the Florida Supreme Court to admit an applicant for admission to the Florida Bar if such applicant has:

- Been brought to the United States as a minor;
- Been present in the United States for more than 10 years;
- Received documented employment authorization from the U.S. Citizenship and Immigration Services;
- Been issued a SSN;
- Registered with the Selective Service System if required to do so under the federal Military Selective Service Act; and
- Otherwise fulfilled all requirements for admission to practice of law in this state.

### **DNA Database**

Section 943.325, F.S., created the DNA database within the FDLE in 1989 and required persons convicted of certain sex crimes to provide blood samples to be tested for genetic markers for the purpose of personal identification of the person submitting the sample.<sup>97</sup> The results from the blood samples were then entered into a DNA database maintained by the FDLE to be available in a statewide automated personal identification system for classifying, matching, and storing DNA analyses.<sup>98</sup>

Since its creation, the statewide DNA database has evolved to the point where the FDLE now accepts oral swab samples (known samples) from qualifying offenders. A qualifying offender means:

- Any person who is:
  - Committed to a county jail;
  - Committed to or under the supervision of the Department of Corrections, including a person incarcerated in a private correctional institution;
  - Committed to or under the supervision of the Department of Juvenile Justice;
  - Transferred to this state under the Interstate Compact on Juveniles, part XIII of ch. 985, F.S.; or
  - Accepted under Article IV of the Interstate Corrections Compact, part III of ch. 941, F.S.;<sup>99</sup>
- And who is:
  - Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;
  - Convicted of:
    - A misdemeanor offense of: stalking; voyeurism; exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations; computer pornography,

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<sup>96</sup> 8 U.S.C. s. 1621(d) (2012).

<sup>97</sup> Ch. 89-335, L.O.F.

<sup>98</sup> *Id.*

<sup>99</sup> Section 943.325(2)(g)1.a.-e., F.S.

- prohibited computer usage, or traveling to meet a minor; or direct observation, videotaping, or visual surveillance of customers in a merchant's dressing room;<sup>100</sup> or
- An offense that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang;<sup>101</sup> or
    - Arrested for any felony offense or attempted felony offense in this state.<sup>102</sup>

The collection of samples from a person booked into a jail, correctional facility, or juvenile facility for a felony has been a phased-in process. The process started in January 2011 and was completed 2020.<sup>103</sup>

## Heath Data

In response to Executive Order No. 21-223, the AHCA issued a corresponding data request to all Florida hospitals with an attached questionnaire.<sup>104</sup> On August 18, 2022, the AHCA reported the results of the data request finding that total costs attributed to illegal aliens were \$312.92 million and that hospitals were paid for \$103.49 million of those costs. The local funds expended for inpatient and outpatient services cost \$700,000, while state and federal funds expended were \$104.91 million and \$5.30 million, respectively. The report also stated that 142 of 316 facilities indicated that charity care provided included illegal aliens.<sup>105</sup> There is some indication that the reported data may be incomplete, however, as many health care facilities do not question patients about their immigration status and struggled to meet the data reporting requirement.<sup>106</sup>

## Hospitals

Hospitals are regulated by the AHCA under ch. 395, F.S., and the general licensure provisions of part II, of ch. 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.<sup>107</sup> Hospitals must make regularly available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment.<sup>108</sup>

<sup>100</sup> These offenses are: stalking; voyeurism; certain acts in connection with obscene, or lewd, materials; renting, selling, or loaning harmful motion pictures, exhibitions, shows, presentations, or representations to minors; computer pornography, prohibited computer usage, or traveling to meet a minor; direct observation, videotaping, or visual surveillance of customers in a merchant's dressing room.

<sup>101</sup> "Criminal gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorist organizations and hate groups. Section 874.03, F.S.

<sup>102</sup> Section 943.325(2)(g)2.a.-c., F.S.

<sup>103</sup> Section 943.325(3)(b), F.S. and FDLE Long Range Program Plan, September 30, 2021, p. 12, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23192&DocType=PDF> (last visited March 10, 2023).

<sup>104</sup> *AHCA Data Request - EO 21-223*, available at [https://ahca.myflorida.com/docs/AHCA\\_Data\\_Request-EO\\_21-223.pdf](https://ahca.myflorida.com/docs/AHCA_Data_Request-EO_21-223.pdf) (last visited March 11, 2023). The questionnaire is available as a link on the data request.

<sup>105</sup> Cost of Services on the Health Care System, Executive Order 21-223, Data for SFY 2020-2021, August 18, 2022, available at [https://ahca.myflorida.com/Executive/Communications/Press\\_Releases/pdf/Executive\\_Order\\_21-223\\_Update\\_01302023.pdf](https://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/Executive_Order_21-223_Update_01302023.pdf) (last visited March 11, 2023).

<sup>106</sup> Hospitals unable to meet undocumented patient data demand from Gov. DeSantis, The Gainesville Sun, Javon L. Harris, June 9, 2022, available at <https://www.gainesville.com/story/news/2022/06/09/florida-hospitals-unable-meet-immigration-data-demand-desantis/7499186001/> (last visited March 11, 2023).

<sup>107</sup> Section 395.002(12), F.S.

<sup>108</sup> *Id.*

The AHCA must maintain an inventory of hospitals with an emergency department.<sup>109</sup> The inventory must list all services within the capability of each hospital, and such services must appear on the face of the hospital's license. As of March 2, 2023, there are 323 licensed hospitals in the state.<sup>110</sup>

Section 395.1055, F.S., authorizes the AHCA to adopt rules for hospitals. Separate standards may be provided for general and specialty hospitals.<sup>111</sup> The rules for general and specialty hospitals must include minimum standards to ensure:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and
- Licensed facility beds conform to minimum space, equipment, and furnishing standards.<sup>112</sup>

The minimum standards for hospital licensure are contained in Chapter 59A-3, F.A.C.

### ***The Emergency Medical Treatment and Labor Act (EMTALA)***

In 1986, Congress enacted EMTALA to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition (EMC), including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with EMCs. If a hospital is unable to stabilize a patient within its capability, or if the patient requests, an appropriate transfer should be implemented.<sup>113</sup>

### **Impermissible Delays**

EMTALA prohibits a participating hospital from delaying providing the appropriate medical screening examination or treatment required for specified reasons. The act allows a hospital to follow "reasonable registration processes;" however, such registration processes "may not unduly discourage individuals from remaining for further evaluation."<sup>114</sup> Interpretive guidelines issued by the federal Centers for Medicare and Medicaid Services for these provisions state that "the registration process permitted in the dedicated [emergency department] typically consists of

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<sup>109</sup> Section 395.1041(2), F.S.

<sup>110</sup> Agency for Health Care Administration, Florida Health Finder Report, available at <https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx> (reports generated on Mar. 3, 2023) (last visited March 10, 2023).

<sup>111</sup> Section 395.1055(2), F.S.

<sup>112</sup> Section 395.1055(1), F.S.

<sup>113</sup> *Emergency Medical Treatment & Labor Act (EMTALA)*, Centers for Medicare and Medicaid Services, last updated December 5, 2022, available at <https://www.cms.gov/regulations-and-guidance/legislation/emtala> (last visited March 10, 2023).

<sup>114</sup> See 42 CFR s. 489.24(d)(4)(iv)

collecting demographic information, insurance information, whom to contact in an emergency and other relevant information.”<sup>115</sup>

### III. Effect of Proposed Changes:

#### Human Smuggling

**Section 10** of the bill amends the human smuggling crime in s. 787.07, F.S., to provide that a person commits a third degree felony when he or she knowingly and willfully:

- Transports into or within this state an individual whom the person knows, or reasonably should know, has is illegally entered entering the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry; or
- Conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place within this state, including any temporary or permanent structure or through any means of transportation, an individual whom the person knows, or reasonably should know, has entered the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry from another country.

The bill provides that a person commits a separate offense for each individual he or she transports, conceals, harbors, or shields from detection, or attempts to transport, conceal, harbor, or shield from detection, into this state in violation of this section.

The bill also enhances the offense of human smuggling to a second degree felony<sup>116</sup> if a person:

- Commits five or more separate offenses under this section during a single episode; or
- Has a prior conviction<sup>117</sup> under this section.

Proof that a person presents identification or gave false information to a law enforcement officer who is conducting an investigation for human smuggling, gives rise to an inference that such person was aware that the transported, concealed, harbored, or shielded individual has entered the United States in violation of the law and had not been inspected by the Federal Government since his or her unlawful entry.

The bill requires a person who is arrested the crime of human smuggling must be held in custody for a court to determine pretrial release in accordance with chapter 903, F.S.

#### Federal Immigration Enforcement

**Section 11** of the bill amends s. 908.104, F.S., to add to the actions a law enforcement agency may take regarding the information regarding a person’s immigration status. Specifically, the bill

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<sup>115</sup> *State Operations Manual Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases*, Centers for Medicare and Medicaid Services, (Rev. 191, 07-19-19), p. 56, available at [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap\\_v\\_emerg.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf) (last visited March 10, 2023).

<sup>116</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 775.083, and 775.084 F.S.

<sup>117</sup> The term “conviction” means a determination of guilt that is the result of a plea agreement or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

allows a law enforcement agency to send relevant information obtained pursuant to enforcement of s. 448.095, F.S., to a federal immigration agency.<sup>118</sup> Further, **Section 14** creates s. 943.0311(2), F.S., to require the Chief of Domestic Security of the FDLE to ensure compliance with s. 448.095, F.S., by regularly coordinating random audits and notifying the DEO of any violations found.

### **Domestic Security**

**Sections 12-16** of the bill amend the FDLE's domestic security statutes to provide the necessary authority for the department to coordinate with and provide assistance to the Federal Government in the enforcement of federal immigration laws, responses to immigration enforcement incidents within or affecting Florida. The bill also directs the department to coordinate and direct the law enforcement, initial emergency, and other initial responses to other matters of concerning the domestic security of Florida as it relates to immigration enforcement incidents.

Specifically, the bill amends the:

- Legislative findings in s. 943.03101, F.S., to include immigration enforcement coordination and require the department to take the lead in such coordination in preparation and response to immigration enforcement incidents within or affecting Florida.
- Regional domestic security task forces to:
  - Direct each task force to cooperate with and provide assistance to the Federal Government in the enforcement of federal immigration laws within or affecting Florida;
  - Facilitate responses to immigration enforcement incidents within or affecting Florida;
  - Establish training standards including curricula and materials related to effective response to immigration enforcement incidents; and
  - Work to ensure that hate-driven acts against ethnic groups that may have been targeted as a result of immigration enforcement incidents within or affecting Florida are appropriately investigated and responded to.
- Domestic security oversight council to:
  - Include the need of executive direction and leadership as it relates to immigration enforcement incidents to the council's legislative findings;
  - Provide guidance to the regional domestic security task forces and other domestic security working groups to make recommendations to the Governor and the Legislature regarding expenditure of funds and resources related to cooperating with and providing assistance to the Federal Government in the enforcement of federal immigration laws;
  - Include representatives from the DHS, ICE, and U.S. Customs and Border Protection as nonvoting members of the council; and
  - Specify immigration enforcement incidents and coordination with and providing assistance to the Federal Government in the enforcement of federal immigration laws are part of the council's duties of oversight of the state's domestic security efforts.

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<sup>118</sup> "Federal immigration agency" means the United States Department of Justice and the United States Department of Homeland Security, a division within such an agency, including United States Immigration and Customs Enforcement and United States Customs and Border Protection, any successor agency, and any other federal agency charged with the enforcement of immigration law. Section 908.102(1), F.S.

## Employment Verification

**Section 7** of the bill amends s. 448.095(3), F.S., related to private employer verification of employment eligibility. The bill requires an employer to also verify the employment status of an individual before recruiting or referring for a fee the individual for employment, similar to federal law.<sup>119</sup>

Under the bill, an employer using either the I-9 Form or E-Verify must retain the documentation used for at least 5 years. If the employer used the E-Verify system, the official verification generated by the system is also required to be retained.

The bill alters the defenses for employers using I-9 Form or E-Verify, similar to federal law. An employer using the I-9 Form, establishing good faith compliance with the law, has established an affirmative defense that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring. An employer taking the additional steps to use the E-Verify system to verify employment eligibility may establish a rebuttable presumption that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring.

The bill clarifies that a private employer that obtains knowledge that an employee is or has become an unauthorized alien may not continue to employ that person.<sup>120</sup>

The bill authorizes the DEO to request documentation from a private employer used to verify an individual's employment eligibility.

Under the bill, if the FDLE, the Attorney General, a state attorney, or the statewide prosecutor determines or finds that a private employer has violated the state's employment verification law, then the person or entity must notify the DEO of such violation.

A private employer that does not use the I-9 Form or E-Verify, or does not maintain the documentation as required, will still be required by the DEO to provide an affidavit as discussed in the Present Situation. However, the bill amends the penalties for noncompliance with the employment verification law:

- If the private employer does not provide the required affidavit within 30 days after the request by the DEO, then the DEO must notify the appropriate licensing agencies to suspend all applicable licenses held by the private employer.
  - The licensing agency must provide the private employer with notification that the suspension shall last until the private employer provides the DEO with the required affidavit.
  - Upon receipt of the required affidavit, the DEO will notify the appropriate licensing agencies to reinstate the licenses held by the private employer.
- If a private employer does not provide the required affidavit within the required time period three times within any 24-month period, then the appropriate licensing agency must revoke all applicable licenses held by the private employer.

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<sup>119</sup> See 8 U.S.C. s. 1324a(a)(1)(A).

<sup>120</sup> See 8 U.S.C. s. 1324a(a)(2).

- The DEO is authorized to impose a fine if the private employer violated the employment verification law and knowingly employed an unauthorized alien in violation of the law.
  - For a first violation, the fine is \$5,000 for each unauthorized alien employed as a result of noncompliance with the law.
  - For a second violation that occurs within 24 months of the first, the fine is \$7,500 for each unauthorized alien employed as a result of noncompliance with the law. All applicable licenses held by the private employer will be suspended for 120 days.
  - For a third or subsequent violation that occurs within 24 months of the first, the fine is \$10,000 for each unauthorized alien employed as a result of noncompliance with the law. All applicable licenses held by the private employer will be revoked.

Enforcement of penalties by the DEO are subject to ch. 120, F.S., and the DEO must provide notice to the employer, including a statement of facts and notice of the opportunity to request a hearing. All fines collected will be deposited into the General Revenue Fund.

The bill also repeals the definition of department as a clarifying change due to other amendments made to the statute.

**Section 6** of the bill amends s. 448.09, F.S., related to employment of unauthorized aliens. The bill increases the fine applied to the first offense from up to \$500 to up to \$1,000; and for each subsequent offense increases the fine from up to \$500 to up to \$2,500.<sup>121</sup> The bill also creates a new penalty for an unauthorized alien who knowingly uses a false identification document, or who fraudulently uses an identification document of another person, for the purpose of obtaining employment. The act is a felony of the third degree, punishable by a term of imprisonment of up to 5 years and a fine of up to \$5,000.<sup>122</sup>

### Identification Cards

**Sections 1 and 2** of the bill create ss. 125.0156 and 166.246, F.S., to prohibit any county or municipality from providing funds to any person, entity, or organization for the purpose of issuing an ID card or other document to an individual who does not provide proof of lawful presence in the United States.

Local governments currently participating in the FaithAction International House or other program to issue ID cards will be required to amend their programs to require proof of lawful presence in the United States if the local governments provide any funds to the organizations issuing the cards.

### Driver Licenses

**Sections 3** of the bill creates s. 322.033, F.S., which provides if a driver license is of a class of licenses issued by another state *exclusively* to undocumented immigrants who are unable to prove lawful presence in the United States when the licenses are issued, the driver license, or other permit purporting to authorize the holder to operate a motor vehicle on public roadways, is

<sup>121</sup> Section 448.09(2), F.S. See ss. 775.082 and 775.083, F.S.

<sup>122</sup> Sections 775.082 and 775.083, F.S.

invalid in this state and does not authorize the holder to operate a motor vehicle in this state. Such classes of licenses include licenses that are issued exclusively to undocumented immigrants or licenses that are substantially the same as licenses issued to citizens, residents, or those lawfully present in the United States but have markings establishing that the license holder did not exercise the option of providing proof of lawful presence.

A law enforcement officer or other authorized representative of the DHSMV who stops a person driving with an invalid license as described and driving without a valid license shall issue a citation to the driver for driving without a license in violation of s. 322.03, F.S.

Currently, s. 322.39, F.S., provides that a person convicted of a violation of ch. 322, F.S., is guilty of a second degree misdemeanor, punishable by a fine of up to \$500 or a term of imprisonment of up to 60 days.<sup>123</sup>

In order to facilitate the enforcement of the new provision related to invalid licenses issued by other states to undocumented immigrants and to aid in providing notice to the public and visitors of these invalid licenses, the DHSMV must maintain on its website a list of out-of-state classes of driver licenses that are invalid in this state.

**Section 4** of the bill amends s. 322.04, F.S., to exclude from certain existing exemptions from obtaining a Florida driver license certain nonresidents who have invalid licenses under the new provisions contained in s. 322.033, F.S., relating to proof of the licensee's lawful presence in the United States.

### **Admission to Practice Law**

Effective November 1, 2026, **Section 8** of the bill repeals s. 454.021(3), F.S., and the provisions that allowed an applicant to the Florida Bar who is an unauthorized immigrant to be admitted to the Bar by the Florida Supreme Court if certain conditions were met.

The bill specifies in **Section 9** of the bill that the repeal of s. 454.021(3), F.S., does not affect the validity of any license to practice law issued pursuant to s. 454.021(3), F.S., before November 1, 2026.

### **DNA Database**

**Section 17** of the bill amends the definition of "qualifying offender" to add a person who is in the custody of a law enforcement agency and is subject to an immigration detainer. A qualifying offender must submit a DNA sample when he or she is booked into a jail or a correctional or juvenile facility. The bill also specifies that a person who becomes a qualifying offender solely because of the issuance of an immigration detainer by a federal immigration agency must submit a DNA sample when the law enforcement agency having custody of the offender receives the detainer.

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<sup>123</sup> See ss. 775.082 or 775.083, F.S.



## Health Data

**Section 5** of the bill creates s. 395.3027, F.S. to require any hospital that accepts Medicaid to include a question on its admission or registration forms, that may be answered by the patient or the patient's representative, inquiring about whether the patient is a United States citizen, is lawfully present in the United States, or is not lawfully present in the United States. The question must be followed by a statement indicating that the response to the question will not affect patient care or result in a report of the patient's immigration status to immigration authorities.

The bill requires each hospital to provide a quarterly report to the AHCA, within 30 days of the end of each quarter, detailing the number of visits or admissions by patients who responded to the above question in each category. The AHCA must, in turn, provide a report to the Governor and the Legislature by March 1 of each year compiling the data received from the hospitals. In addition, the annual report must describe the costs of uncompensated care provided to patients not lawfully in the country, the impact of uncompensated care on the cost or ability of hospitals to provide services to the public and on hospital funding needs, and other related information.

The AHCA is authorized to adopt rules specific to the format of the quarterly report and the format of the question that hospitals must include on their admission or registration forms. The bill specifies that the rules may not require disclosure of patient names to the AHCA.

## Effective Date

The bill take effect July 1, 2023, except for **Section 8**, relating to admissions to practice law in Florida.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

The bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees, and thus the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals found in violation of employment laws related to knowingly employing unauthorized aliens will be subject to stronger penalties. Employers who violate laws related to employment verification and knowingly employ unauthorized aliens in violation of the employment verification law will be subject to stronger penalties.

Individuals using false documentation or identification to obtain employment may be subject to a third degree felony.

Organizations that partner with local governments to issue Community ID cards that do not require proof of lawful presence in the United States may experience a loss in revenue if the local government ends the partnership program or no longer provides funding.

Individuals in Florida with out-of-state driver's licenses that are issued exclusively to undocumented immigrants may be subject to penalties or may be required to obtain a Florida driver's license to operate in this state.

Hospitals will be required to change their forms, if the question is not already included on the forms; however this cost is anticipated to be minimal.

C. Government Sector Impact:

The bill amends the FDLE's domestic security statutes to provide the necessary authority for the department to coordinate with and provide assistance to the Federal Government in the enforcement of federal immigration laws, responses to immigration enforcement incidents within or affecting Florida. The FDLE has the necessary framework and governance structure for domestic security in place. Any changes needed can be addressed within existing resources.

The FDLE is already conducting audits of employers in Florida, pursuant to the Governor's Executive Order in 2021, and the provisions of the bill requiring regular coordination of random audits will not have a negative fiscal impact on the department.

The DEO currently does not have a robust enforcement section and will incur costs to establish positions and enforce the provisions of this section. The department has not yet

submitted an analysis of the fiscal impact of the bill at this time. The impact is anticipated to be a significant cost to the DEO.

There may be an insignificant, positive fiscal impact from fees for individuals who have to obtain a Florida driver's license who were previously exempt. The DHSMV can maintain the list of invalid licenses on its website within existing resources.

The ACHA can collect the information and create the report required by the bill with minimal fiscal impact. In 2022, in response to Executive Order No. 21-223, the AHCA issued a similar report. However, see Section VII. Related Issues, below.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

**Section 5** of the bill requires hospitals to report to the AHCA the number of patients who responded to the added question about immigration status on their admission or registration forms in specified ways. The bill also requires the AHCA to compile a report to the Governor and the Legislature detailing the data gathered from the reports above as well as indicating specified costs of services provided to patients not in the country lawfully. However, the bill does not require hospitals to report such costs of services to the AHCA, only the number of patients served; as such, the AHCA may lack the required information to provide an accurate report to the Governor and the Legislature on the actual costs of services provided to patients not in the country lawfully.

**Section 10** of the bill expands the crime of human smuggling. In 2010, the Governor of Arizona signed S.B. 1070 which contained criminal penalties for human smuggling.<sup>124</sup> The federal government sought to declare S.B. 1070 invalid arguing it was preempted by federal law and violated the Supremacy Clause of the United States Constitution. The Supreme Court ruled that the Arizona law was preempted by federal law.<sup>125</sup> To the extent that the expansion of the offense of human smuggling is similar to the Arizona's S.B. 1070, it may be preempted by federal law.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 322.04, 448.09, 448.095, 454.021, 787.07, 908.104, 943.03, 943.03101, 943.0311, 943.0312, 943.0313, and 943.325.

This bill creates the following sections of the Florida Statutes: 125.0156, 166.246, 322.033, and 395.3027.

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<sup>124</sup> *U.S. v. Arizona*, 2010 WL 2653363, Complaint. (July 6, 2010).

<sup>125</sup> *U.S. v. Arizona*, 119 F.Supp. 3d. 955, (2014).

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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