

By Senator Gruters

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1                   A bill to be entitled  
2           An act relating to immigration; providing a directive  
3           to the Division of Law Revision; creating s. 811.101,  
4           F.S.; defining the terms "removal" and "unauthorized  
5           alien"; creating s. 811.102, F.S.; providing criminal  
6           penalties for adult unauthorized aliens who knowingly  
7           enter or attempt to enter this state after entering  
8           the United States by eluding or avoiding examination  
9           or inspection by immigration officers; providing a  
10          mandatory minimum term of imprisonment; providing  
11          enhanced criminal penalties for second or subsequent  
12          convictions; providing mandatory minimum terms of  
13          imprisonment; prohibiting the arrest of unauthorized  
14          aliens under specified circumstances; providing  
15          affirmative defenses; requiring a court to presume  
16          that no conditions of release can reasonably assure  
17          the presence of an unauthorized alien arrested for  
18          certain violations at trial and to order the detention  
19          of such an unauthorized alien arrested for such a  
20          violation pending disposition of the case; specifying  
21          that such aliens are not eligible for any civil  
22          citation or other prearrest or postarrest diversion  
23          program; requiring the arresting law enforcement  
24          agency to notify certain entities of the unauthorized  
25          alien's arrest; creating s. 811.103, F.S.; providing  
26          criminal penalties for an adult unauthorized alien  
27          who, after having been denied admission, excluded,  
28          deported, or removed or having departed the United  
29          States during the time an order of exclusion,

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30 deportation, or removal is outstanding, thereafter  
31 enters, attempts to enter, or is at any time found in  
32 this state; providing exceptions; providing a  
33 mandatory minimum term of imprisonment; providing  
34 enhanced criminal penalties for an unauthorized alien  
35 whose arrest for such violations was after convictions  
36 for the commission of specified offenses; requiring a  
37 court to presume that no conditions of release can  
38 reasonably assure the presence of an unauthorized  
39 alien arrested for certain violations at trial and to  
40 order the detention of such an unauthorized alien  
41 arrested for such a violation pending disposition of  
42 the case; specifying that such aliens are not eligible  
43 for any civil citation or other prearrest or  
44 postarrest diversion program; requiring the arresting  
45 law enforcement agency to notify certain entities of  
46 the unauthorized alien's arrest; creating s. 921.1426,  
47 F.S.; requiring a court to sentence a defendant who is  
48 an unauthorized alien and who is convicted or  
49 adjudicated guilty of a capital felony to a sentence  
50 of death; defining the term "unauthorized alien";  
51 providing an effective date.

52  
53 Be It Enacted by the Legislature of the State of Florida:

54  
55 Section 1. The Division of Law Revision is directed to  
56 create chapter 811, Florida Statutes, to be entitled  
57 "UNAUTHORIZED ALIENS, NATIONALITY, AND IMMIGRATION," consisting  
58 of ss. 811.101, 811.102, and 811.103, Florida Statutes.

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59 Section 2. Section 811.101, Florida Statutes, is created to  
60 read:

61 811.101 Definitions.—As used in this chapter, the term:

62 (1) "Removal" means the departure from the United States of  
63 an unauthorized alien after any proceeding under 8 U.S.C. ss.  
64 1225, 1228, 1229, or 1229a or any agreement in which an  
65 unauthorized alien stipulates to his or her departure from the  
66 United States as part of a criminal proceeding under federal or  
67 state law.

68 (2) "Unauthorized alien" has the same meaning as in s.  
69 908.111.

70 Section 3. Section 811.102, Florida Statutes, is created to  
71 read:

72 811.102 Illegal entry by adult unauthorized alien into this  
73 state.—

74 (1) Except as provided in subsection (2), an unauthorized  
75 alien who is 18 years of age or older and who knowingly enters  
76 or attempts to enter this state after entering the United States  
77 by eluding or avoiding examination or inspection by immigration  
78 officers commits a misdemeanor of the first degree, punishable  
79 as provided in s. 775.082 or s. 775.083. A person convicted of a  
80 violation of this subsection must be sentenced to a mandatory  
81 minimum term of imprisonment of 9 months.

82 (2) (a) An unauthorized alien who has one prior conviction  
83 for a violation of this section and who commits a second  
84 violation of subsection (1) commits a felony of the third  
85 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
86 775.084. A person convicted of a violation of this paragraph  
87 must be sentenced to a mandatory minimum term of imprisonment of

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88 1 year and 1 day.

89 (b) An unauthorized alien who has two or more prior  
90 convictions for a violation of this section and who commits a  
91 subsequent violation of subsection (1) commits a felony of the  
92 third degree, punishable as provided in s. 775.082, s. 775.083,  
93 or s. 775.084. A person convicted for a violation of this  
94 paragraph must be sentenced to a mandatory minimum term of  
95 imprisonment of 2 years.

96 (3) An unauthorized alien may not be arrested for a  
97 violation of this section if the unauthorized alien was  
98 encountered by law enforcement during the investigation of  
99 another crime that occurred in this state and the unauthorized  
100 alien witnessed or reported such crime or was a victim of such  
101 crime.

102 (4) It is an affirmative defense to prosecution under this  
103 section if:

104 (a) The Federal Government has granted the unauthorized  
105 alien lawful presence in the United States or discretionary  
106 relief that authorizes the unauthorized alien to remain in the  
107 United States temporarily or permanently;

108 (b) The unauthorized alien is subject to relief under the  
109 Cuban Adjustment Act of 1966; or

110 (c) The unauthorized alien's entry into the United States  
111 did not constitute a violation of 8 U.S.C. s. 1325(a).

112 (5) Notwithstanding any other law, and unless release is  
113 otherwise required by the State Constitution or the United  
114 States Constitution, the court shall presume that no conditions  
115 of release can reasonably assure the presence of an unauthorized  
116 alien arrested for a violation of this section at his or her

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117 trial and must order the unauthorized alien to be detained  
118 pending the disposition of the case.

119 (6) An unauthorized alien who commits a violation of this  
120 section is not eligible for a civil citation, prearrest or  
121 postarrest diversion program, or other similar program,  
122 including, but not limited to, any program described in s.  
123 901.41 or s. 921.00241.

124 (7) Upon making an arrest for a violation of this section,  
125 the arresting law enforcement agency shall:

126 (a) Notify Immigration and Customs Enforcement of the  
127 United States Department of Homeland Security of the  
128 unauthorized alien's arrest and provide any known information  
129 relating to the unauthorized alien; and

130 (b) Notify the Department of Law Enforcement of the  
131 unauthorized alien's arrest and provide information relating to  
132 the unauthorized alien, which must include his or her  
133 fingerprints, photograph, and any other biometric information  
134 necessary to identify the unauthorized alien.

135 Section 4. Section 811.103, Florida Statutes, is created to  
136 read:

137 811.103 Illegal reentry of an adult unauthorized alien.—

138 (1) An unauthorized alien who is 18 years of age or older  
139 commits a felony of the third degree, punishable as provided in  
140 s. 775.082, s. 775.083, or s. 775.084, if he or she, after  
141 having been denied admission, excluded, deported, or removed or  
142 having departed the United States during the time an order of  
143 exclusion, deportation, or removal is outstanding, thereafter  
144 enters, attempts to enter, or is at any time found in this  
145 state. An unauthorized alien does not commit a violation of this

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146 subsection if, before the unauthorized alien's reembarkation at  
147 a place outside the United States or his or her application for  
148 admission from a foreign contiguous territory:

149 (a) The Attorney General of the United States expressly  
150 consented to his or her reapplication for admission; or

151 (b) With respect to an unauthorized alien who was  
152 previously denied admission and removed, the unauthorized alien  
153 establishes that he or she was not required to obtain such  
154 advance consent under the Immigration and Nationality Act, as  
155 amended.

156 (2) Except as provided in subsection (3), an unauthorized  
157 alien who violates subsection (1) must be sentenced to a  
158 mandatory minimum term of imprisonment of 1 year and 1 day.

159 (3) (a) An unauthorized alien who has three or more prior  
160 convictions for a misdemeanor or a felony, other than a forcible  
161 felony as defined in s. 776.08 or an aggravated felony as  
162 defined in 8 U.S.C. s. 1101, and who commits a violation of  
163 subsection (1) commits a felony of the third degree, punishable  
164 as provided in s. 775.082, s. 775.083, or s. 775.084. A person  
165 convicted of violating this paragraph must be sentenced to a  
166 mandatory minimum term of imprisonment of 2 years.

167 (b) An unauthorized alien who has a prior conviction for a  
168 forcible felony as defined in s. 776.08 or an aggravated felony  
169 as defined in 8 U.S.C s. 1101 and who commits a violation of  
170 subsection (1) commits a felony of the second degree, punishable  
171 as provided in s. 775.082, s. 775.083, or s. 775.084. A person  
172 convicted of a violation of this paragraph must be sentenced to  
173 a mandatory minimum term of imprisonment of 5 years.

174 (4) Notwithstanding any other law, and unless release is

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175 otherwise required by the State Constitution or the United  
176 States Constitution, the court shall presume that no conditions  
177 of release can reasonably assure the presence of an unauthorized  
178 alien arrested for a violation of this section at his or her  
179 trial and must order the unauthorized alien to be detained  
180 pending the disposition of the case.

181 (5) An unauthorized alien who commits a violation of this  
182 section is not eligible for a civil citation, prearrest or  
183 postarrest diversion program, or other similar program,  
184 including, but not limited to, any program described in s.  
185 901.41 or s. 921.00241.

186 (6) Upon making an arrest for a violation of this section,  
187 the arresting law enforcement agency shall:

188 (a) Notify Immigration and Customs Enforcement of the  
189 United States Department of Homeland Security of the  
190 unauthorized alien's arrest and provide any known information  
191 relating to the unauthorized alien; and

192 (b) Notify the Department of Law Enforcement of the  
193 unauthorized alien's arrest and provide information relating to  
194 the unauthorized alien, which must include his or her  
195 fingerprints, photograph, and any other biometric information  
196 necessary to identify the unauthorized alien.

197 Section 5. Section 921.1426, Florida Statutes, is created  
198 to read:

199 921.1426 Sentence of death for capital offense committed by  
200 unauthorized alien.—Notwithstanding any provision of law to the  
201 contrary, the court shall sentence a defendant who is an  
202 unauthorized alien and who is convicted or adjudicated guilty of  
203 a capital felony to a sentence of death. As used in this

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204 section, the term "unauthorized alien" has the same meaning as  
205 in s. 908.111.

206 Section 6. This act shall take effect upon becoming a law.