

1 A bill to be entitled
2 An act relating to the verification of employment
3 eligibility; amending s. 287.061, F.S.; requiring that
4 certain information be included in the economic
5 development incentive application process; creating s.
6 448.095, F.S.; providing definitions; requiring public
7 employers, contractors, and subcontractors to register
8 with and use the E-Verify system; prohibiting such
9 entities from entering into a contract unless each
10 party to the contract registers with and uses the E-
11 Verify system; requiring a subcontractor to provide a
12 contractor with a certain affidavit; requiring a
13 contractor to maintain a copy of such affidavit;
14 authorizing the termination of a contract under
15 certain conditions; providing that such termination is
16 not a breach of contract; authorizing a challenge to
17 such termination; providing certain liability if a
18 contract is terminated; requiring private employers to
19 verify the employment eligibility of newly hired
20 employees beginning on a specified date; providing an
21 exception; providing acceptable methods for verifying
22 employment eligibility; requiring a private employer
23 to maintain certain documentation for a specified
24 time; providing specified immunity and nonliability
25 for private employers; creating a rebuttable

26 | presumption for private employers; requiring private
 27 | employers to provide copies of certain employment
 28 | documents, upon request, to specified persons or
 29 | entities for certain purposes; providing for the
 30 | suspension or revocation of certain licenses under
 31 | certain circumstances; providing construction;
 32 | providing an effective date.

34 | Be It Enacted by the Legislature of the State of Florida:

36 | Section 1. Subsection (7) is added to section 288.061,
 37 | Florida Statutes, to read:

38 | 288.061 Economic development incentive application
 39 | process.—

40 | (7) Beginning July 1, 2020, the executive director may not
 41 | approve an economic development incentive application unless the
 42 | application includes proof to the department that the applicant
 43 | is registered with and uses the E-Verify system, as defined in
 44 | s. 448.095, to verify the work authorization status of all newly
 45 | hired employees. If the department determines that the awardee
 46 | is not complying with this subsection, the department must
 47 | notify the awardee by certified mail of the department's
 48 | determination of noncompliance and the awardee's right to appeal
 49 | the determination. On a final determination of noncompliance,
 50 | the awardee must repay all monies received as an economic

51 development incentive to the department within thirty days of
52 the final determination.

53 Section 2. Section 448.095, Florida Statutes, is created
54 to read:

55 448.095 Employment eligibility.-

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

57 (a) "Agency" means an agency, a department, a board, or a
58 commission of this state or a county or municipality which
59 issues a license to operate a business in this state.

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

64 (c) "Department" means the Department of Economic
65 Opportunity.

66 (d) "Employee" means a person filling an authorized and
67 established position who performs labor or services for a public
68 or private employer in exchange for salary, wages, or other
69 remuneration.

70 (e) "E-Verify system" means an Internet-based system
71 operated by the United States Department of Homeland Security
72 that allows participating employers to electronically verify the
73 employment eligibility of newly hired employees.

74 (f) "Legal alien" means a person who is or was lawfully
75 present or permanently residing legally in the United States and

76 | allowed to work at the time of employment and remains so
 77 | throughout the duration of that employment.

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

83 | 1. An article of incorporation.

84 | 2. A certificate of partnership, a partnership
 85 | registration, or an article of organization.

86 | 3. A grant of authority issued pursuant to state or
 87 | federal law.

88 | 4. A transaction privilege tax license.

89 | (h) "Private employer" means a person or entity that
 90 | transacts business in this state, that has a license issued by
 91 | an agency in this state, and that employs persons to perform
 92 | labor or services in exchange for salary, wages, or other
 93 | remuneration. The term does not include:

94 | 1. A public employer;

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

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

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

101 3. An employee leasing company licensed under part XI of
102 chapter 468 that enters into a written agreement or
103 understanding with a client company which places the primary
104 obligation for compliance with this section upon the client
105 company. In the absence of a written agreement or understanding,
106 the employee leasing company is responsible for compliance with
107 this section. Such employee leasing company shall, at all times,
108 remain an employer as otherwise defined in federal laws or
109 regulations.

110 (i) "Public employer" means an entity within state,
111 regional, county, local, or municipal government, whether
112 executive, judicial, or legislative, or any public school,
113 community college, or state university that employs persons who
114 perform labor or services for that employer in exchange for
115 salary, wages, or other remuneration or that enters or attempts
116 to enter into a contract with a contractor.

117 (j) "Subcontractor" means a person or entity that provides
118 labor, supplies, or services to or for a contractor or another
119 subcontractor in exchange for salary, wages, or other
120 remuneration.

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

126 (2) PUBLIC EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS.—

127 (a) Beginning January 1, 2021, every public employer,
128 contractor, and subcontractor shall register with and use the E-
129 Verify system to verify the work authorization status of all
130 newly hired employees. A public employer, contractor, or
131 subcontractor may not enter into a contract unless each party to
132 the contract registers with and uses the E-Verify system.

133 (b)1. If a contractor enters into a contract with a
134 subcontractor, the subcontractor must provide the contractor
135 with an affidavit stating that the subcontractor does not
136 employ, contract with, or subcontract with an unauthorized
137 alien.

138 2. The contractor shall maintain a copy of such affidavit
139 for the duration of the contract.

140 (c)1. A public employer, contractor, or subcontractor who
141 has a good faith belief that a person or entity with which it is
142 contracting has knowingly violated s. 448.09(1) shall terminate
143 the contract with the person or entity.

144 2. A public employer that has a good faith belief that a
145 subcontractor knowingly violated this subsection, but the
146 contractor otherwise complied with this subsection, shall
147 promptly notify the contractor and order the contractor to
148 immediately terminate the contract with the subcontractor.

149 3. A contract terminated under subparagraph 1. or
150 subparagraph 2. is not a breach of contract and may not be

151 considered as such.

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

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

160 (f) A contractor is liable for any additional costs
161 incurred by the public employer as a result of the termination
162 of the contract.

163 (3) PRIVATE EMPLOYERS.—

164 (a) Beginning January 1, 2021, a private employer shall,
165 after making an offer of employment which has been accepted by a
166 person, verify such person's employment eligibility. A private
167 employer is not required to verify the employment eligibility of
168 a continuing employee hired before January 1, 2021. However, if
169 a person is a contract employee retained by a private employer,
170 the private employer must verify the employee's employment
171 eligibility upon the renewal or extension of his or her
172 contract.

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

175 1. Using the E-Verify system; or

176 2. Requiring the person to provide the same documentation
177 that is required by the United States Citizenship and
178 Immigration Services on its Employment Eligibility Verification
179 form (Form I-9).

180

181 The private employer must retain a copy of the documentation
182 provided under this subparagraph for at least 3 years after the
183 person's initial date of employment.

184 (c) A private employer that complies with this subsection
185 may not be held civilly or criminally liable under state law for
186 hiring, continuing to employ, or refusing to hire an
187 unauthorized alien if the information obtained under paragraph
188 (b) indicates that the person's work authorization status was
189 not that of an unauthorized alien.

190 (d) For purposes of this subsection, compliance with
191 paragraph (b) creates a rebuttable presumption that a private
192 employer did not knowingly employ an unauthorized alien in
193 violation of s. 448.09(1).

194 (e) For the purpose of enforcement of this section, the
195 following persons or entities may request, and the private
196 employer must provide copies of, any documents relied upon by
197 the private employer for the verification of a person's
198 employment eligibility, including, but not limited to, any
199 document required under paragraph (b):

200 1. The Department of Law Enforcement.

201 2. The Attorney General.

202 3. The state attorney.

203 4. The statewide prosecutor.

204
205 A person or entity that makes a request under this paragraph
206 must rely upon the federal government to verify a person's
207 employment eligibility, and may not independently make a final
208 determination as to whether a person is an unauthorized alien.

209 (f) If a private employer does not comply with paragraph
210 (b), the department must require the private employer to provide
211 an affidavit to the department stating that the private employer
212 will comply with paragraph (b) and the private employer has
213 terminated the employment of all unauthorized aliens in this
214 state and that the employer will not intentionally or knowingly
215 employ an unauthorized alien in this state. If the private
216 employer does not provide the required affidavit within 30 days,
217 the department must order the appropriate agency to suspend all
218 applicable licenses held by the private employer until the
219 private employer provides the department with the required
220 affidavit. For the purposes of this paragraph, the licenses that
221 are subject to suspension under this paragraph are all licenses
222 that are held by the employer specific to the business location
223 where the unauthorized alien performed work. If the employer
224 does not hold a license specific to the business location where
225 the unauthorized alien performed work, but a license is

226 necessary to operate the employer's business in general, the
227 licenses that are subject to suspension under this subdivision
228 are all licenses that are held by the employer at the employer's
229 primary place of business.

230 (g) For any private employer found to have violated
231 paragraph (f) three times within any 36 month period, the
232 department shall order the appropriate agencies to permanently
233 revoke all licenses that are held by the private employer
234 specific to the business location where the unauthorized alien
235 performed work. If the private employer does not hold a license
236 specific to the business location where the unauthorized alien
237 performed work, but a license is necessary to operate the
238 private employer's business in general, the department shall
239 order the appropriate agencies to permanently revoke all
240 licenses that are held by the private employer at the private
241 employer's primary place of business.

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

246 Section 3. This act shall take effect July 1, 2020.