

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1617 Immigration

SPONSOR(S): Commerce Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Florida law requires state and local law enforcement entities to cooperate and assist the federal government in the enforcement of federal immigration laws, provides criminal penalties for human smuggling into the state, and provides employment verification requirements for public and private employers.

The bill, in part:

- Beginning July 1, 2023, requires private employers, with 25 or more employees, to use E-Verify for new employees.
- Expands violations and penalties related to human smuggling when smuggling a minor, more than five people, or when a defendant has a prior conviction for human smuggling, and allows prosecution of human smuggling under the Florida Racketeer Influenced and Corrupt Organization (RICO) Act.
- Prohibits a county or municipality from providing funds to issue community ID cards for individuals who are not lawfully in the country.
- Invalidates driver's licenses that are exclusively issued by another state to undocumented immigrants, and requires the Department of Highway Safety and Motor Vehicles (DHSMV) to issue citations and maintain a list of out of state classes of driver licenses that are invalid.
- Removes the authority for unauthorized immigrants to be admitted to the Florida Bar, effective November 1, 2028.
- Requires persons who are in the custody of a law enforcement agency and subject to an immigration detainer to submit DNA to the statewide DNA database.
- Requires hospitals that accept Medicaid to collect immigration status data related to admissions and emergency room visits and report to the Agency of Health Care Administration (AHCA).
- For the 2023-2024 fiscal year, provides a \$12 million nonrecurring appropriation to the Division of Emergency Management for the Unauthorized Alien Transport Program.

The bill has a negative fiscal impact on state and local government, and the private sector.

The effective date of the bill is July 1, 2023, except as otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Immigration Laws

The Federal Government establishes and enforces immigration laws. The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.¹

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations, is responsible for enforcing the immigration laws and identifying, apprehending, and removing aliens who are a risk to national security or public safety, who are in the country illegally, or who undermine the integrity of the country's immigration laws or border control efforts.²

U.S. Customs and Border Protection (Border Patrol) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The Border Patrol's top priority is to keep terrorists and their weapons from entering the United States.

In 2020, The Border Patrol had 646,822 enforcement actions. In 2021, that total increased to over 1.9 million actions, an increase of over 200 percent. The Border Patrol's total enforcement actions in 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 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, including individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.³

In addition to the dramatic increase in border encounters, the recidivism rate has also increased. According to the Border Patrol webpage, "recidivism refers to percentage of individuals apprehended more than one time by the Border Patrol within a fiscal year." In 2019, the rate was only 7 percent. However, that climbed to an increase of 26 percent in 2020 and 27 percent in 2021.⁴

Encounters with criminal noncitizens in 2020 were 9,447, in 2021 were 17,330, in 2022 were 29,021, and so far in 2023 are 11,785. "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."⁵

Governor's Executive Orders on Immigration

The Governor has issued two Executive Orders attempting to address the enforcement of immigration

¹ 8 U.S.C. §§ -1401 Suppl. 2 1964.

² U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, <https://www.ice.gov/ero> (last visited Mar. 21, 2023).

³ U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Mar. 21, 2023).

⁴ *Id.*

⁵ *Id.*

laws and the immigration crisis the state has on its borders.⁶

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 (SAVE) program to confirm the eligibility of persons before providing any funds, resources, or other benefits.

Specifically, the executive order:

- Directs the Florida Department of Law Enforcement (FDLE) and the Florida Highway Patrol (FHP) to determine on an ongoing basis the number and identities of all illegal aliens⁷ 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 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 FDLE was to make available on its website.
- Directs the Agency for Health Care Administration (AHCA), in coordination with the Department of Children and Families (DCF), the Department of Health (DOH), 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. 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 AHCA and DOH.
- Directs DCF 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 children⁸ 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

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

⁷ "Illegal Aliens" are defined in section 11 of the order to have the same meaning as provided in 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).

⁸ Defined in the order to have the same meaning as under 6 U.S.C. s. 279(g)(2).

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.⁹

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 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.¹⁰

Federal Immigration Law

The federal government has broad power over immigration and alien status.¹¹ This power is enforced through an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States, including the INA.¹² 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.¹³

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 Border Patrol has with border-crossers. Full-time professional criminals are facilitating the smuggling of immigrants across the border. Human smuggling is estimated to generate over \$6.75 billion a year.¹⁴

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, the law prohibits a person from:¹⁵

- Knowing that a person is an alien, bringing or attempting 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, 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.
- 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.

⁹ State of Florida, Office of the Governor, *Executive Order No. 21-223*, September 28, 2021, https://www.flgov.com/wp-content/uploads/2021/09/EO_21-223.pdf (last visited Mar. 21, 2023)

¹⁰ State of Florida, Office of the Governor, *Executive Order No. 23-03*, January 6, 2023, <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-03.pdf> (last visited Mar. 21, 2023).

¹¹ *Arizona v. United States*, 567 U.S. 387 (2012).

¹² 8 U.S.C. s. 1108, et seq.

¹³ *De Canas v. Bica*, 424 U.S. 351, 355 (1976).

¹⁴ United Nations Office on Drugs and Crime, *Transnational Organized Crime: Let's put them out of business*, <https://www.unodc.org/toc/en/crimes/migrant-smuggling.html> (last visited Mar. 21, 2023).

¹⁵ 8 U.S.C. s. 1324(a).

- Engages in any conspiracy to commit any of the preceding acts or aids or abets the commission of any of the preceding acts.

Before 2009, Florida 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 criminal penalties for human smuggling.¹⁶ Current law makes it a third degree felony¹⁷ 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.¹⁸

A person who violates the prohibition against concealing, harboring, or shielding an alien is generally subject to up to five years imprisonment, but may punishment can be increased as follows:

- Up to 10 years imprisonment if the violation was done for the purpose of commercial advantage or private financial gain.
- Up to 20 years imprisonment if the violation causes seriously bodily injury to, or places in jeopardy, the life of any person.
- Death or life imprisonment if a violation results in the death of any person.¹⁹

However, the federal law provides an exception to the offense of concealing, harboring, or shielding an alien which allows a religious organization to invite, call, allow, or enable an alien who is present in the United States to perform the vocation of minister or missionary as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided he or she has been a member of the denomination for at least one year.²⁰

Federal law also requires the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, to develop and implement an outreach program to educate the public about the penalties for unlawfully bringing in and harboring aliens.²¹

Statewide Grand Jury Recommendations – Human Smuggling

In June of 2022, a Statewide Grand Jury was impaneled at the request of Governor Desantis for the purpose of investigating the impact of illegal immigration on Florida. In its First Presentment filed in December of 2022, the Twenty-First Statewide Grand Jury concluded that the smuggling of illegal aliens not only endangers Floridians, but also generates huge sums of money for transnational criminal organizations which is used to further other criminal activities, including drug trafficking and human trafficking. The Grand Jury concluded that “[s]ince smuggling of illegal aliens into and within Florida involves multiple individuals, [transnational criminal organizations], and other criminals, the human smuggling statute must be revised.”²²

¹⁶ Chapter 2009-160, L.O.F.

¹⁷ 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.

¹⁸ S. 787.07, F.S.

¹⁹ 8 U.S.C. § 1324(a)(1)(A) and (B).

²⁰ 8 U.S.C. § 1324(a)(1)(C).

²¹ 8 U.S.C. § 1324(e).

²² The Supreme Court of Florida, *First Presentment of the Twenty-First Statewide Grand Jury* (s. 787.07, F.S.),

<https://supremecourt.flcourts.gov/News-Media/Statewide-Grand-Jury> (last visited Mar. 21, 2023).

Cooperation with Federal Immigration Authorities

In 2019, the Legislature passed federal immigration enforcement legislation.²³ The law requires a law enforcement agency²⁴ to use its best efforts to support the enforcement of federal immigration law and applies to any official, representative, agent, or employee of an entity or agency when he or she is acting within the scope of his or her official duties or employment. Unless expressly required by federal law, a state entity, local government entity, or law enforcement agency, or any employee, agent, or representative of the entity or agency, may not prohibit or restrict a law enforcement agency from taking any of 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 the purposes of ch. 908, F.S.
- Recording and maintaining the information for the 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 the 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.

In specified criminal cases in which a detained offender is subject to an immigration detainer and transfer to the custody of the federal government, a sentencing judge must issue an order requiring the secure detention facility²⁵ in which the defendant is to be confined to reduce his or her sentence by up to 12 days when the facility determines such a reduction will facilitate the seamless transfer of the defendant to federal custody. When a secure correctional facility receives verification from a federal immigration agency that a person subject to an immigration detainer is in the law enforcement agency's custody, the agency may securely transport the person to a federal facility in Florida or to another point of transfer to federal custody outside the jurisdiction of the law enforcement agency.²⁶ Such a transfer may occur no earlier than within 12 days of the person's release date. A law enforcement agency transferring an alien to a point of transfer outside of Florida must obtain judicial authorization before completing such a transfer.

Section 908.104(5), F.S., provides an exception to the requirement that a law enforcement agency must provide a federal immigration agency with information regarding a detained person and applies when such a person is also a victim or witness to a criminal offense if the person timely and in good faith responds to the entity or agency's request for information and cooperation in the investigation or prosecution of the offense. If any state entity, local governmental entity, or law enforcement agency, withholds information pursuant to this exception, it must document the victim's or witness's cooperation in the related investigative records and retain the records for at least 10 years for the purpose of audit, verification, or inspection by the Auditor General. A law enforcement agency may not detain an alien who is unlawfully present in the United States pursuant to an immigration detainer solely because the alien witnessed or reported a crime or was a victim of a crime.²⁷ Finally, the requirements of s. 908.104, F.S., do not apply when the alien who is unlawfully present is or has been a necessary witness or victim of a crime of domestic violence, rape, sexual exploitation, sexual assault, murder, manslaughter, assault, battery, human trafficking, kidnapping, false imprisonment, involuntary servitude, fraud in foreign labor contracting, blackmail, extortion, or witness tampering.²⁸

²³ 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.

²⁴ "Law enforcement agency" means 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. S. 908.102(4), F.S.

²⁵ "Secure detention facility" means a state correctional facility as defined in s. 944.02, F.S., or a county detention facility or municipal detention facility as defined in s. 951.23, F.S.

²⁶ S. 908.104(4), F.S.

²⁷ S. 908.104(7), F.S.

²⁸ S. 908.104(8), F.S.

Statewide Grand Jury Recommendations – Qualifying Victims

In January 2023, the Twenty-First Statewide Grand Jury reviewed county compliance with s. 908.104, F.S., specifically the process by which inmates in some county jails seek to lift a detainer issued by U.S. Immigration and Customs Enforcement. The Grand Jury concluded that s. 908.104(8), F.S., is being intentionally and flagrantly abused, leading to the lifting of detainees contrary to the plain meaning of the statute and the statute's intent. The Grand Jury further found that unproven claims of being a qualifying victim are being submitted and approved allowing county officials to disregard and lift federal detainees. To combat further abuse, the Grand Jury concluded that s. 908.104(8), F.S., must be deleted in its entirety and that s. 908.104(5), F.S., must be limited to crimes occurring in the United States and be time barred to five years prior to an alien's claim for relief under the statute. The Grand Jury also found that persons seeking relief under the statute need to provide credible sworn supporting evidence of eligibility.²⁹

Florida RICO (Racketeer Influenced and Corrupt Organization) Act

The Florida RICO (Racketeering Influenced and Corrupt Organization) Act³⁰ is the area of Florida law that governs the crime of "racketeering activity."³¹

The RICO Act defines a "pattern of racketeering activity" to mean engaging in at least two incidents of racketeering conduct³² having the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.³³

The RICO Act provides that it is unlawful for any person:³⁴

- With criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt³⁵ to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.³⁶
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

²⁹ The Supreme Court of Florida, Second Presentation of the Twenty-First Statewide Grand Jury (s. 908.104, F.S.), https://efacts.sc-public.flcourts.org/casedocuments/2022/796/2022-796_miscdoc_375408_e99.pdf (last visited Mar. 21, 2023).

³⁰ Ss. 895.01-895.06, F.S.

³¹ S. 895.02(8), F.S., defines "racketeering activity" to include crimes that are chargeable by petition, indictment, or information under the certain specified provisions of law, any conduct defined as "racketeering activity" in 18 U.S.C. § 1961, and any violation of Title 68, Florida Administrative Code, relating to the illegal sale, purchase, collection, harvest, capture, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

³² At least one of such incidents of racketeering conduct must have occurred after October 1, 1977, and the last incident of racketeering conduct must have occurred within five years after a prior incident. S. 895.02(7), F.S.

³³ S. 895.02(7), F.S.

³⁴ S. 895.03, F.S.

³⁵ "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law. S. 895.02(12), F.S.

³⁶ "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise. S. 895.02(5), F.S.

A person convicted of any of the illegal activities commits a first degree felony,³⁷ and may be subject to civil remedies including forfeiture to the state of all property, including money, if the property is intended for use in the course of, derived from, or realized through acts in violation of the Florida RICO Act.³⁸

In *Bowden v. State*, the Florida Supreme Court considered the definition of “pattern of racketeering activity” in s. 895.02(7), F.S., construing the definition to not only require “similarity and interrelatedness of racketeering activities,” but also “proof that a continuity of a particular criminal activity exists.”³⁹ The court in *Bowden* reasoned that requiring continuity of criminal activity ensures that RICO prosecutions are of professional or career criminals and not individuals who have committed minor crimes.⁴⁰

In cases where the defendant is charged under s. 895.03, F.S., Florida courts have analyzed the continuity requirement by turning to U.S. Supreme Court precedent.⁴¹ When considering the elements necessary to satisfy the pattern requirement⁴² of the federal RICO Act⁴³ in *H.J. Inc. v. Northwestern Bell Telephone Co.*, the U.S. Supreme Court held that the predicate offenses must amount to, or otherwise constitute a threat of, continuing racketeering activity in order to establish a pattern.⁴⁴ The Court described continuity as “both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.”⁴⁵

Unauthorized Alien Transport Program

The Unauthorized Alien Transport Program within the Division of Emergency Management (DEM) within the Executive Office of the Governor facilitates the transport of inspected unauthorized aliens within the United States, consistent with federal law. DEM is authorized to contract for services to implement the program. The program will expire on June 30, 2025.⁴⁶

Federal Immigration Enforcement

In 2019, the Legislature passed federal immigration enforcement legislation.⁴⁷ The law ensures 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.⁴⁸ When local law enforcement agencies work with federal immigration officials, aliens who have committed serious crimes are more easily identified and removed.

Specifically, the law allows a law enforcement agency⁴⁹ to take the following actions with respect to information regarding a person’s immigration status:

³⁷ S. 895.04, F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

³⁸ S. 895.05(2), F.S.

³⁹ *Bowden v. State*, 402 So. 2d 1173, 1174 (Fla. 1981).

⁴⁰ *Id.*

⁴¹ *See State v. Lucas*, 600 So. 2d 1093, 1094 (Fla. 1992) (reasoning that the state sufficiently alleged a threat of criminal activity to constitute open-ended continuity as described by federal precedent).

⁴² 18 U.S.C. § 1962 discusses prohibited activities, which all require a pattern of racketeering activity or collection of an unlawful debt.

⁴³ The Racketeer Influenced and Corrupt Organizations Act is found in 18 U.S.C. §§ 1961-1968.

⁴⁴ *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240 (1989).

⁴⁵ *Id.* at 241.

⁴⁶ Ch. 2023-3, Laws of Fla.

⁴⁷ Ch. 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.

⁴⁸ *See* ch. 908, F.S.

⁴⁹ S. 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.

- 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.

Domestic Security

The mission of 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.”⁵⁰ 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.⁵¹

The three primary components of Florida’s domestic security governance structure include:⁵²

- Regional domestic security task forces.
- Domestic security coordinating group.
- Domestic security oversight council.

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.⁵³

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.⁵⁴

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.⁵⁵

The domestic security oversight council was established in 2004 to provide direction, leadership, and recommendations to the Governor and the Legislature on domestic security.⁵⁶ 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 Motor Vehicles, a representative of the

⁵⁰ Florida Department of Law Enforcement, FDLE Home, *About FDLE*, available at <https://www.fdle.state.fl.us/About-Us> (last visited Mar. 10, 2023).

⁵¹ S. 943.0311(1), F.S.

⁵² 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 Mar.10, 2023).

⁵³ *Id.*

⁵⁴ S. 943.0312, F.S.

⁵⁵ 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 Mar. 10, 2023).

⁵⁶ *Id.*

United States Coast Guard, and a special agency in charge from an office of the Federal Bureau of Investigations within Florida.⁵⁷

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.⁵⁸

Employment Verification

Under the Immigration Reform and Control Act of 1986 (IRCA),⁵⁹ 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.⁶⁰

The employment verification process begins when an employee accepts an offer of employment.⁶¹ 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 work⁶² 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.⁶³

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.⁶⁴ 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.

E-Verify Federal Law

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),⁶⁵ 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 authorized to work in the United States. E-Verify is administered by DHS 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.⁶⁶

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

⁵⁷ S. 943.0313(1), F.S.

⁵⁸ S. 943.0313(5), F.S.

⁵⁹ Pub. L. No. 99-603, 100 Stat. 3359.

⁶⁰ 8 U.S.C. s. 1324a.

⁶¹ U.S. Citizenship and Immigration Services, *Complete and Correct Form I-9*, <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9> (last visited Mar. 11, 2023).

⁶² 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.

⁶³ See 8 C.F.R. § 274a.2(b)(1)(i)(A).

⁶⁴ 8 U.S.C. s. 1324a. See 8 C.F.R. § 274a.2(b)(1)(ii).

⁶⁵ Pub. L. No. 104-208.

⁶⁶ U.S. Citizenship and Immigration Services, *How do I use E-Verify?* <https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf> (last visited Mar. 21, 2023).

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.⁶⁷ 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.⁶⁸

To use the E-Verify system, an employer must open a "case" for the employee on the system and enter basic information from the employee's Form I-9 (name, address, SSN) into the case.⁶⁹ Then, the system checks the submitted information to records that are available to the DHS and SSA, and issues one of the following 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.⁷⁰

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.⁷¹

E-Verify Defenses for Employers

According 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.⁷²

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.⁷³

The IRCA provides sanctions to be imposed on employers who knowingly employ aliens who are not authorized to work.⁷⁴ Federal law contains no criminal sanction for working without authorization,

⁶⁷ E-Verify, *History and Milestones*, <https://www.e-verify.gov/about-e-verify/history-and-milestones> (last visited Mar. 21, 2023).

⁶⁸ E-Verify, *E-Verify Usage Statistics*, click "Show the Data Table" for a download csv, <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-usage-statistics> and *How To Find Participating Employers*, [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 Mar. 21, 2023).

⁶⁹ E-Verify, *Verification Process*, for details on how the system works, <https://www.e-verify.gov/employers/verification-process> (last visited Mar. 21, 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*, <https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf> (last visited Mar. 21, 2023).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 8 U.S.C. s. 1324a(a)(3).

⁷³ 8 U.S.C. s. 1324a notes, *Pilot Programs for Employment Eligibility Confirmation*.

⁷⁴ 8 U.S.C. s. 1324a(a)(1)-(2).

although document fraud is a civil violation.⁷⁵ The United States Citizenship and Immigration Services (USCIS) enforces these provisions.⁷⁶

E-Verify Results in 2022

In 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.⁷⁷

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 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.”⁷⁸

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.⁷⁹ The DHS issued guidance that extended the 3-day rule to permit employers additional time to submit new employee information to E-Verify and gave employees additional time to resolve a case.⁸⁰

E-Verify Florida Law

Since January 1, 2021, in Florida, all public employers and their contractors and subcontractors have been required to register and use E-Verify to verify the work authorization status of all newly hired employees.⁸¹ Subcontractors must provide an affidavit to their contractor stating that they do not employ, contract with, or subcontract with unauthorized aliens. The contractor must keep a copy of such affidavit for the duration of the contract.⁸²

Since January 1, 2021, in Florida, private employers have been 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.⁸³ 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.⁸⁴ The

⁷⁵ 8 U.S.C. s. 1324c.

⁷⁶ 8 U.S.C. s. 1324a.

⁷⁷ E-Verify, *E-Verify Performance*, <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance> (last visited Mar. 21, 2023).

⁷⁸ *Id.*

⁷⁹ National Law Review, *When the Government Shuts Down: The Impact on E-Verify, I-9’s, and Visas*, January 25, 2019, <https://www.natlawreview.com/article/when-government-shuts-down-impact-e-verify-i-9-s-and-visas> (last visited Mar. 21, 2023).

⁸⁰ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *E-Verify Resumes Operation*, January 27, 2019, <https://www.e-verify.gov/e-verify-resumes-operation> (last visited Mar. 21, 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, <https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-enhancements/january-2019> (last visited Mar. 21, 2023).

⁸¹ S. 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) 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, <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-116-suspend.pdf> (last visited Mar. 21, 2023).

⁸² S. 448.095(2)(b), F.S.

⁸³ S. 448.095(3), F.S., provides that 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.

⁸⁴ S. 448.095(3), F.S.

law applies to all private employers and does not appear to specify application based on a minimum amount of employees.

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.⁸⁵

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.⁸⁶ 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.⁸⁷

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.⁸⁸

A private employer that does not use the I-9 Form or E-Verify, or does not maintain the I-9 Form documentation for three 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.⁸⁹

If the private employer does not provide the required affidavit within 30 days after the request by the DEO, the appropriate licensing agency⁹⁰ 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 applies to all licenses that are held by the private employer at the private employer's primary place of business.⁹¹

E-Verify in Other States

Currently, 22 states require the use of E-Verify for at least some public and/or private employers. These states include Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia and West Virginia.⁹²

⁸⁵ *Id.*

⁸⁶ S. 448.09(1), F.S.

⁸⁷ S. 448.09(2), F.S. *See* ss. 775.082 and 775.083, F.S.

⁸⁸ S. 448.095(3), F.S.

⁸⁹ *Id.*

⁹⁰ 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.

⁹¹ *Id.*

⁹² National Conference of State Legislatures, State E-Verify Action, <https://www.ncsl.org/immigration/state-e-verify-action> (last visited Mar. 21, 2023).

The following states require private employers, as well as public employers and their contractors and subcontractors, to use E-Verify: North Carolina;⁹³ Mississippi;⁹⁴ Georgia;⁹⁵ Arizona;⁹⁶ Alabama;⁹⁷ Utah;⁹⁸ and South Carolina.⁹⁹

The following states require only public employers and their contractors to use E-Verify: Indiana;¹⁰⁰ Nebraska;¹⁰¹ Missouri;¹⁰² Colorado;¹⁰³ Oklahoma;¹⁰⁴ Texas;¹⁰⁵ and Virginia.¹⁰⁶

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.¹⁰⁷ Pennsylvania requires public contractors and private *construction* employers to use E-Verify.¹⁰⁸ In Michigan, only contractors of the Michigan Department of Transportation must use E-Verify.¹⁰⁹ Finally, West Virginia requires contractors whose employees work on the Capitol grounds to use E-Verify.¹¹⁰

County and Municipal Community ID Cards

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities. Pursuant to general or special law, a county government may be adopted by charter approved by the county voters.¹¹¹ A county without a charter has such powers of self-government as provided by general¹¹² or special law.¹¹³ A county with a charter has all powers of self-government not inconsistent with general law or special law approved by the county voters.¹¹⁴ The Florida Constitution

⁹³ 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).

⁹⁴ Miss. Code § 71-11-3.

⁹⁵ Ga. Code § 13-10-91 (public employers and contractors); 36-60-6 (private employers that have more than 10 employees).

⁹⁶ Ariz. Rev. Stat. § 41-4401 (public contractors); 23-214 (private and public employers).

⁹⁷ Ala. Code § 31-13-15.

⁹⁸ 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.

⁹⁹ S.C. Code § 41-8-20 (private employers); 8-14-20 (public employers and contractors).

¹⁰⁰ Ind. Code § 22-5-1.7-11.1.

¹⁰¹ Nev. Rev. St. § 4-114.

¹⁰² Miss. Stat. § 285.530.

¹⁰³ Colo. Rev. Stat. § 8-17.5-102.

¹⁰⁴ 25 Okl. St. § 1313 (public employers and contractors must use E-Verify or another federal verification program).

¹⁰⁵ Tex. Nat. Res. Code § 81.072 (public contractors); Tex. Gov. Code § 673.002 (state agencies)

¹⁰⁶ Va. Code § 40.1-11.2 (state agencies), 2.2-4308.2 (public contractors).

¹⁰⁷ Tenn. Code § 50-1-703.

¹⁰⁸ 43 Penn. Stat. § 167.3 (public contractors); 43 Penn. Stat. § 168.3 (private construction employers).

¹⁰⁹ Act 200, Public Acts of 2012, Sec. 381.

¹¹⁰ W. Va. Code, § 15-2D-3.

¹¹¹ S. 125.60, F.S.

¹¹² Ch. 125, Part I, F.S.

¹¹³ Art. VIII, s. 1(f), FLA. CONST.

¹¹⁴ Art. VIII, s. 1(g), FLA. CONST.

provides unique authorization¹¹⁵ for specific home rule charters including those of Duval¹¹⁶ and Miami-Dade Counties.¹¹⁷ Currently, 20 Florida counties have adopted charters.¹¹⁸

Municipalities have all governmental, corporate, and proprietary powers necessary to conduct municipal government, functions, and services, and may exercise any power for municipal purposes¹¹⁹ except as otherwise provided by general law.¹²⁰

Counties and municipalities are authorized to set and control their respective budgets subject to general law.¹²¹ For example, all county and municipal budgets must be balanced.¹²²

A county commissioner voting to approve paying an illegal charge or claim not authorized by law is guilty of malfeasance¹²³ and is subject to suspension by the Governor.¹²⁴ A clerk of the court serving as county auditor¹²⁵ who willfully or knowingly signs a warrant to pay an illegal charge is personally liable for the entire amount of such payment.¹²⁶ An elected or appointed municipal official who commits malfeasance or misfeasance in office also is subject to gubernatorial suspension.¹²⁷

Recently, certain private organizations, like the FaithAction International House, in conjunction with local communities, have been issuing community IDs, with the goal of providing 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. According to the FaithAction International House webpage, "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, serve, and protect them."¹²⁸ FaithAction International House provides that ID card is not a state issued form of identification, which is 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

¹¹⁵ Article VIII, s. 6(e), FLA. CONST., incorporating by reference ss. 9, 10, 11, 24 from article VIII of the 1885 Constitution, states that these specific provisions respectively for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."

¹¹⁶ The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, FLA. CONST. (1885).

¹¹⁷ In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

¹¹⁸ Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual, Appendix C, p. 106, at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3227&Session=2023&DocumentType=General+Publications&FileName=2022+Local+Government+Formation+Manual.pdf> (last visited March 17, 2023).

¹¹⁹ S. 166.021(2), F.S., which defines "municipal purpose" as "any activity or power which may be exercised by the state or its political subdivisions."

¹²⁰ Art. VIII, s. 2(b), FLA. CONST.

¹²¹ See ss. 129.01, 129.02, F.S. for counties, s. 166.241, F.S., for municipalities.

¹²² Ss. 129.01(2)(b), 166.241(2), F.S.

¹²³ S. 129.08, F.S.

¹²⁴ Art. IV, s. 7, FLA. CONST.

¹²⁵ Art. VIII, s. 1(d), FLA. CONST.

¹²⁶ S. 129.09, F.S.

¹²⁷ S. 112.51, F.S.

¹²⁸ FaithAction International House, *FaithAction ID Program and Network*, <https://faithaction.org/faithaction-id-program-and-network/> (last visited Mar. 21, 2023).

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.¹²⁹

In Florida, several local governments have partnered with organizations to offer Community ID cards. In 2019 the City of West Palm Beach passed a resolution authorizing the city to accept identification cards issued by People Engaged in Active Community Efforts, affiliated with Legal Aid in Palm Beach County. The city appropriated \$40,000 to the program to issue identification cards to those without access to other forms of identification, including undocumented immigrants. Cards are issued under this program for a fee of \$20.¹³⁰

On January 31, 2023, the Board of County Commissioners for Miami-Dade County adopted a plan to fund \$200,000 to Branches, a non-profit tax preparation entity, to issue county identification cards to those without access to other forms of identification, including individuals who are homeless or who are undocumented immigrants.¹³¹

Broward County approved a program for Legal Aid Service of Broward County to issue the Broward Community ID Card for a fee of \$20. The card is provided to individuals who can present a particular form of current or expired identification¹³² and prove they are a Broward County resident with an address effective within the past three months. The program cautions that the card neither authorizes driving or entitlement to social welfare benefits nor affects the cardholder's immigration status.¹³³

The City of Aventura and other municipalities offer 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. 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.¹³⁴

Driver Licenses

Current law 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.¹³⁵ However, an individual is exempt from obtaining a Florida driver license if he or she is a nonresident who is:¹³⁶

- 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.

Current law establishes requirements governing the issuance of driver licenses by DHSMV.¹³⁷ An applicant for a driver license or identification card is required to provide his or her SSN for the purpose

¹²⁹ *Id.*

¹³⁰ WPTV West Palm Beach, *New IDs for undocumented immigrants in Palm Beach County*, <https://www.wptv.com/news/local-news/immigrants-in-south-florida/new-ids-for-undocumented-immigrants-in-palm-beach-county> (last visited Mar. 21, 2023).

¹³¹ Newsweek, *Florida County to Issue IDs to Undocumented Immigrants Through Third Party*, <https://www.newsweek.com/florida-county-issue-ids-undocumented-immigrants-through-third-party-1675585> (last visited Mar. 21, 2023).

¹³² Examples given include a passport, driver's license, foreign national ID, consular or embassy ID, or military ID.

¹³³ Legal Aid Service of Broward County, *Broward Community ID*, <https://www.browardlegalaid.org/communityid/> (last visited March 17, 2023).

¹³⁴ City of Aventura, *Aventura ID Card*, <https://www.cityofaventura.com/221/Aventura-ID-Card>; City of Delray Beach, *Residency (Activities) Identification Cards*, <https://www.delraybeachfl.gov/government/city-departments/city-clerk/residency-identification-cards>; City of Sunny Isles Beach, *Resident ID Card*, <https://www.sibfl.net/ccs/residentid/>; The Villages, *Resident ID Card Information*, <https://districtgov.org/departments/Community-Service/idCards.aspx> (last visited Mar. 21, 2023).

¹³⁵ *See* s. 322.03, F.S.

¹³⁶ S. 322.04(1)(c) and (d), F.S.

¹³⁷ *See* s. 322.08, F.S.

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:¹³⁸

- 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.

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.¹³⁹

DHSMV is authorized 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.¹⁴⁰

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.

DHSMV is authorized 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.¹⁴¹ 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.¹⁴²

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 include, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington. The states 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.¹⁴³

¹³⁸ S. 322.08(2)(c), F.S.

¹³⁹ S. 322.08(2)(c)8., F.S.

¹⁴⁰ S. 322.12, F.S.

¹⁴¹ S. 322.02(4), F.S.

¹⁴² FindLaw, *Driver's Licenses FAQ*, November 27, 2017, <https://www.findlaw.com/traffic/drivers-license-vehicle-info/driver-s-licenses-faq.html> (last visited Mar. 21, 2023).

¹⁴³ National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants*, January 16, 2023, <https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants> (last visited Mar. 21, 2023).

Since 1993, beginning in the State of Washington, states have offered undocumented immigrants the ability to obtain a state driver license to encourage otherwise unlicensed drivers to pass driver license testing and obtain vehicle insurance.¹⁴⁴

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.¹⁴⁵

Admission to Practice Law

In 2014 the Legislature authorized applicants to the Florida Bar who are unauthorized immigrants to be admitted to the Bar by the Florida Supreme Court if certain conditions are met.¹⁴⁶ 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.¹⁴⁷ The Court held that federal law prohibits specified categories of aliens from obtaining certain public 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.¹⁴⁸

Current law allows the Florida Supreme Court to admit an applicant for admission to the Florida Bar if such applicant has:¹⁴⁹

- 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 law in this state.

Statewide DNA Database

The Legislature established the Statewide DNA database (statewide database) in 1989, which is administered by the Florida Department of Law Enforcement (FDLE) and capable of classifying, matching, and storing analyses of DNA and other biological material and related data.¹⁵⁰ The statewide database contains DNA samples, including those:¹⁵¹

- Submitted by persons convicted of or arrested for felony offenses and specified misdemeanor offenses; and
- Necessary for identifying missing persons and unidentified human remains, including samples voluntarily contributed by relatives of missing persons.

¹⁴⁴ Britannica ProCon, *States (and DC) That Allow Undocumented Immigrants to Obtain Driver's Licenses*, November 14, 2022, [States \(and DC\) That Allow Undocumented Immigrants to Obtain Driver's Licenses - Immigration - ProCon.org](https://www.procon.org/entry/states-and-dc-that-allow-undocumented-immigrants-to-obtain-drivers-licenses-immigration) (last visited Mar. 21, 2023).

¹⁴⁵ Department of Homeland Security, *Real ID Frequently Asked Questions for the Public*, <https://www.dhs.gov/archive/real-id-public-faqs> (last visited Mar. 21, 2023).

¹⁴⁶ Chapter 2014-35, L.O.F.

¹⁴⁷ *Florida Board of Bar Examiners Re: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar*. No. SC11-2568 (Mar. 6, 2014).

¹⁴⁸ 8 U.S.C. s. 1621(d) (2012).

¹⁴⁹ S. 454.021(3), F.S.

¹⁵⁰ Ch. 89-335, Laws of Fla., codified in s. 943.325, F.S.

¹⁵¹ S. 943.325(3), F.S.

All accredited local government crime laboratories in Florida have access to the statewide database in accordance with rules and agreements established by FDLE.¹⁵² Local laboratories can access the statewide database through the FBI's Combined DNA Index System (CODIS),¹⁵³ allowing for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.¹⁵⁴

The statewide database may contain DNA data obtained from the following types of biological samples:¹⁵⁵

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.
- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.
- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by FDLE.

A “qualifying offender” is defined as any person, including a juvenile or adult:¹⁵⁶

- Who is:
 - Committed to a county jail;
 - Committed to or under the supervision of the Department of Corrections (DOC), including a private correctional institution;
 - Committed to or under the supervision of the Department of Juvenile Justice (DJJ); or
 - Transferred to Florida under the Interstate Compact on Juveniles or the Interstate Corrections Compact; and
- Who is:
 - Convicted of any felony offense or attempted felony offense in Florida or a similar offense in another jurisdiction;
 - Convicted of a specified misdemeanor violation;¹⁵⁷ or
 - Arrested for any felony offense or attempted felony offense in Florida.¹⁵⁸

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested in Florida;
- Incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision in Florida.¹⁵⁹

An arrested offender is required to submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. An incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.¹⁶⁰

¹⁵² S. 943.325(4), F.S.

¹⁵³ “CODIS” means the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. S. 943.325(2)(b), F.S.

¹⁵⁴ S. 943.325(2), F.S.

¹⁵⁵ S. 943.325(6), F.S.

¹⁵⁶ S. 943.325(2)(g), F.S.

¹⁵⁷ Including a misdemeanor violation of s. 784.048 (stalking), s. 810.14 (voyeurism), s. 847.013 (exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations), s. 847.0135 (owner or operator of computer service used for child pornography violation), or s. 877.26 (observing or taping in dressing room), or an offense that was found, pursuant to s. 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03. See s. 943.325(2)(g)2.b., F.S.

¹⁵⁸ S. 943.325(2)(g), F.S.

¹⁵⁹ S. 943.325(7), F.S.

¹⁶⁰ *Id.*

FDLE is required to retain all DNA samples submitted to the statewide database and such samples may be used for any lawful purpose.¹⁶¹ Because submission requirements have been expanded since the creation of the statewide database, an offender arrested or convicted before the enactment of the current requirements may not have submitted a DNA sample at the time of his or her initial booking.

FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the National DNA Index System (NDIS).¹⁶² Results of any DNA analysis must be entered into the statewide database and may only be released to criminal justice agencies. Otherwise, the information is confidential and exempt from state public records disclosure requirements under s. 119.07(1), F.S., and article I, s. 24(a), of the Florida Constitution.¹⁶³

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 2020.¹⁶⁴

Health Data

In response to Executive Order No. 21-223, AHCA issued a corresponding data request to all Florida hospitals with an attached questionnaire.¹⁶⁵ On August 18, 2022, 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.¹⁶⁶ 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.¹⁶⁷

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.¹⁶⁸ 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.¹⁶⁹

AHCA must maintain an inventory of hospitals with an emergency department.¹⁷⁰ 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 were 323 licensed hospitals in the state.¹⁷¹

¹⁶¹ *Id.*

¹⁶² The DNA Index System is a national index of permissible DNA records input by federal, state and local participating criminal justice agency forensic laboratories, FBI FAQ, <https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet> (last visited Mar. 21, 2023).

¹⁶³ S. 943.325(14), F.S.

¹⁶⁴ S. 943.325(3)(b), F.S. and FDLE Long Range Program Plan, September 30, 2021, p. 12, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23192&DocType=PDF> (last visited Mar. 21, 2023).

¹⁶⁵ Agency for Health Care Administration, *AHCA Data Request - EO 21-223*, https://ahca.myflorida.com/content/download/4724/file/AHCA_Data_Request-EO_21-223.pdf (last visited Mar. 21, 2023).

¹⁶⁶ Agency for Health Care Administration, *Cost of Services on the Health Care System, Executive Order 21-223, Data for SFY 2020-2021, August 18, 2022*, https://ahca.myflorida.com/content/download/20792/file/Executive_Order_21-223_Update_01302023.pdf (last visited Mar. 21, 2023).

¹⁶⁷ Hospitals unable to meet undocumented patient data demand from Gov. DeSantis, The Gainesville Sun, Javon L. Harris, June 9, 2022, <https://www.gainesville.com/story/news/2022/06/09/florida-hospitals-unable-meet-immigration-data-demand-desantis/7499186001/> (last visited Mar. 21, 2023).

¹⁶⁸ S. 395.002(12), F.S.

¹⁶⁹ *Id.*

¹⁷⁰ S. 395.1041(2), F.S.

¹⁷¹ Agency for Health Care Administration, *Florida Health Finder Report*, <https://quality.healthfinder.fl.gov/facilitylocator/ListFacilities.aspx> (last visited Mar. 21, 2023).

AHCA is authorized to adopt rules for the licensing and regulation of hospitals.¹⁷² Separate standards may be provided for general and specialty hospitals.¹⁷³ The rules for general and specialty hospitals must include minimum standards to ensure:¹⁷⁴

- 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.

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

The Emergency Medical Treatment and Labor Act

In 1986, Congress enacted the Emergency Medical Treatment and Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay.¹⁷⁵ 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.¹⁷⁶

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."¹⁷⁷ 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 collecting demographic information, insurance information, whom to contact in an emergency and other relevant information."¹⁷⁸

Proposed Changes

ID Cards

The bill prohibits counties and municipalities from providing funding to any person, entity, or organization for the purpose of issuing an identification card or document to an individual who cannot provide proof of lawful presence in the United States. The bill does not prohibit counties or municipalities from accepting such identification produced by a third party for local governmental purposes.

¹⁷² See s. 395.1055, F.S.

¹⁷³ S. 395.1055(2), F.S.

¹⁷⁴ S. 395.1055(1), F.S.

¹⁷⁵ See 42 U.S. Code § 1395dd.

¹⁷⁶ Centers for Medicare and Medicaid Services, *Emergency Medical Treatment & Labor Act (EMTALA)*, <https://www.cms.gov/regulations-and-guidance/legislation/emtala> (last visited Mar. 21, 2023).

¹⁷⁷ See 42 CFR s. 489.24(d)(4)(iv).

¹⁷⁸ Centers for Medicare and Medicaid Services, *State Operations Manual Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases*, p. 56, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf (last visited Mar. 21, 2023).

Driver Licenses

The bill provides that 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 license was issued, the driver license, or other permit purporting to authorize the holder to operate a motor vehicle on public roadways, is 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.

The bill requires a law enforcement officer or other authorized representative of DHSMV who stops a person driving with such an invalid license to issue a citation to the driver for driving without a license in violation of s. 322.03, F.S., which 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.¹⁷⁹

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 bill requires DHSMV to maintain on its website a list of out-of-state classes of driver licenses that are invalid in this state.

The bill revises the circumstances under which certain nonresidents are exempt from obtaining a Florida driver license to specify that the nonresident's license must not be invalid under the new provisions contained in s. 322.033, F.S., relating to proof of the licensee's lawful presence in the United States.

Health Data

The bill requires any hospital that accepts Medicaid to include a question on its patient 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 AHCA, within 30 days of the end of each quarter, detailing the number of admissions or emergency department visits by patients who responded to the required question. 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. 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.

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 or other personal identifying information to AHCA.

Employment Prohibitions

Effective July 1, 2024, the bill amends penalties for violation of laws prohibiting the employment of unauthorized aliens, as follows:

- If DEO finds or is notified by FDLE, the Attorney General, the state attorney in the circuit in which the new employee works, or the statewide prosecutor that an employer employed an unauthorized alien without verifying the employment eligibility of such person, then DEO must

¹⁷⁹ See ss. 775.082 or 775.083, F.S.
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enter an order making a determination of violation and require repayment of any economic development incentive as required in s. 288.061, F.S.

- For a first violation, DEO must place the employer on a one-year probation and require quarterly reporting to demonstrate compliance.
- Subsequent violations that take place within 24 months after a previous violation constitute grounds for the suspension or revocation of all licenses issued by a licensing agency subject to the administrative procedure act.

DEO is required to take the following actions based on violations involving:

- One to 10 unauthorized aliens: suspension of all applicable licenses held by a private employer for up to 30 days by the respective agencies that issued them.
- Eleven to 50 unauthorized aliens: suspension of all applicable licenses held by a private employer for up to 60 days by the respective agencies that issued them.
- More than 50 unauthorized aliens: revocation of all applicable licenses held by a private employer by the respective agencies that issued them.

The bill creates a third degree felony for an alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security and who knowingly uses a false identification document or who fraudulently uses an identification document of another person for the purpose of obtaining employment.

E-Verify

The bill revises the E-Verify employment verification law as follows:

- Maintains the requirement that public employers use the E-Verify system.
- Beginning July 1, 2023, requires private employers with 25 or more employees to use the E-Verify system to verify employment eligibility of new employees instead of allowing the use of E-Verify or a Form I-9.
- Requires each employer required to use the E-Verify system to certify on its first return each calendar year to the tax service provider that it is in compliance when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.
- Requires employers to use the Employment Eligibility Verification form (Form I-9) to verify employment eligibility if the E-Verify system is unavailable for 3 business days after the first day that the new employee begins working for pay and an employer cannot access the system to verify a new employee's employment eligibility.
 - Provides that the unavailability of the E-Verify system does not bar the employer from using the rebuttable presumption.
 - Requires the employer to document the unavailability of the E-Verify system by retaining a screenshot from each day which shows the employer's lack of access to the system, a public announcement that the E-Verify system is not available, or any other communication or notice recorded by the employer regarding the unavailability of the system.
- Provides that an employee leasing company licensed under part XI of chapter 468, F.S., which enters into a written agreement or understanding with a client company which places the primary obligation for compliance with the E-Verify provisions upon the client company is not required to verify employment eligibility of any new employees of the client company.
 - Provides that in the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with these provisions.
 - Requires such employee leasing company to, at all times, remain an employer as otherwise defined in federal laws or regulations.

The bill revises the list of entities that are authorized to request copies of documentation relied upon by a private employer for verification of a person's employment eligibility, to:

- Add DEO.
- Specify that the state attorney must be in the circuit in which the new employee works.

The bill clarifies the defenses for employers, as follows:

- An employer that complies with the E-Verify laws establishes an affirmative defense that the employer has not violated s. 448.09, F.S., which prohibits employment of unauthorized aliens, with respect to such employment.

The bill provides the following compliance requirements:

- In addition to the requirements under s. 288.061(6), F.S., which require DEO to enforce E-Verify requirements for businesses applying for economic incentives, beginning on July 1, 2024, if DEO determines that an employer failed to use the E-Verify system to verify the employment eligibility of employees:
 - DEO must notify the employer of the department's determination of noncompliance and provide the employer with 30 days to cure the noncompliance.
 - If an employer is determined to not have used the E-Verify system as required three times in any 24-month period, the department must impose a fine of \$1,000 per day until the employer provides sufficient proof to the department that the noncompliance is cured.
 - Noncompliance constitutes grounds for the suspension of all licenses issued by a licensing agency subject to the administrative procedure act until the noncompliance is cured.
 - Fines collected must be deposited into the State Economic Enhancement and Development Trust Fund for use by the department for employer outreach and public notice of the state's employment verification laws.

The bill specifies that the requirements to use the E-Verify system do not apply in any federal fiscal year in which the system is not funded by the Federal Government.

The bill also revises definitions as follows:

- Revises the definition of “employee” to:
 - Address individuals filling permanent positions.
- Defines “public agency” as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
- Revises the definition of “unauthorized alien” to reference individuals instead of persons.

Admission to Practice Law

The bill repeals the provisions that allow 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. The bill specifies that such repeal does not affect the validity of any license to practice law issued pursuant to this provision before November 1, 2028.

Human Smuggling

The bill clarifies current prohibitions against human smuggling to specify that the law applies to persons who **knowingly and willfully** transport **individuals into this state** that the person **reasonably** should know has entered the United States in violation of law and has not been inspected by the United States Government since her or her unlawful entry.

Under the bill, a violation for human smuggling remains a third degree felony. The bill strengthens penalties for human smuggling, making it a second degree felony¹⁸⁰ in the following cases:

- Transporting a minor into the state in violation of the human smuggling provisions.
- Committing five or more separate offenses of human smuggling during a single episode.
- Committing subsequent violations with a prior conviction.

¹⁸⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

The bill provides that proof that a person knowingly and willfully presented false identification or gave false information to a law enforcement officer who is conducting an investigation for a violation of these provisions 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 arrested for a human smuggling offense to be held in custody until brought before the court for admittance to pretrial release in accordance with ch. 903, F.S., which is the chapter of law governing bail.

The bill adds the crime of human smuggling to the list of crimes that allow for prosecution under the RICO Act.

Cooperation with Federal Immigration Authorities

The bill adds to the actions a law enforcement agency may take regarding a person's immigration status. Specifically, the bill allows a law enforcement agency to send relevant information obtained pursuant to enforcement of the E-Verify requirements to a federal immigration agency.¹⁸¹

FDLE Domestic Security

The bill adds immigration coordination and assistance with the Federal Government in the enforcement of federal immigration laws and response to immigration incidents that are within or affecting the state to FDLE's duties with respect to domestic security.

Domestic Security

The bill amends 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 the state.

Specifically, the bill:

- Revises Legislative findings to include immigration enforcement coordination and assistance to the Federal Government in the enforcement of federal immigration laws, and responses to immigration enforcement incidents within or affecting the state.
- Requires the Chief of Domestic Security of FDLE to ensure compliance with the E-Verify requirements, by regularly coordinating random audits and notifying the DEO of any violations found.
- Requires the regional domestic security task forces 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.
- Requires the 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;

¹⁸¹ S. 908.102(1), F.S., defines "federal immigration agency" as 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.

- Include in their guidance to the regional domestic security task forces and other domestic security working groups 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.
- 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.

Statewide DNA Database

The bill expands the definition of a “qualifying offender” who is subject to having a DNA sample taken and submitted to the statewide database when the offender is a person:

- Who is:
 - Committed to a county jail;
 - Committed to or under the supervision of the Department of Corrections, including a private correctional institution;
 - Committed to or under the supervision of the Department of Juvenile Justice; or
 - Transferred to Florida under the Interstate Compact on Juveniles or the Interstate Corrections Compact; and
- Who is in the custody of a law enforcement agency and is subject to an immigration detainer issued by a federal immigration agency.

The bill requires a person who becomes a qualifying offender solely because of the issuance of an immigration detainer by a federal immigration agency to submit a DNA sample, and the law enforcement agency to immediately take the DNA sample, when the law enforcement agency having custody of the offender receives the detainer. Additionally, the bill requires the agency to secure and transmit the sample to FDLE in a timely manner.

Unauthorized Alien Transport Program Appropriation

For the 2023-2024 fiscal year, the bill appropriates a nonrecurring sum of \$12 million from the General Revenue Fund to the Division of Emergency Management within the Executive Office of the Governor for the Unauthorized Alien Transport Program.

Effective Date

The bill provides an effective date of July 1, 2023, except as otherwise expressly provided.

B. SECTION DIRECTORY:

- Section 1. Creates s. 125.0156, F.S., relating to restrictions on providing funds for identification documents.
- Section 2. Creates s. 166.246, F.S., relating to restrictions on providing funds for identification documents.
- Section 3. Creates s. 322.033, F.S., relating to unauthorized aliens; invalid out-of-state driver licenses.
- Section 4. Amends s. 322.04, F.S., relating to persons exempt from obtaining a driver license.
- Section 5. Creates s. 395.3027, F.S., relating to patient immigration status data collection for hospitals that accept Medicaid.
- Section 6. Amends s. 448.09, F.S., relating to unauthorized aliens; employment prohibited.

- Section 7 Amends s. 448.095, F.S., relating to private employer's requirements of using the E-Verify system.
- Section 8. Amends s. 454.021, F.S., relating to the authority for an unauthorized immigrant to obtain a license to practice law in this state.
- Section 9. Provides applicability relating to the revision to s. 454.021, F.S.
- Section 10. Amends s. 787.07, F.S., relating to human smuggling.
- Section 11: Amends s. 895.02, F.S., relating to racketeering activity.
- Section 12. Amends s. 908.104, F.S., relating to cooperation with federal immigration authorities.
- Section 13: Amends s. 943.03, F.S., relating to the Department of Law Enforcement.
- Section 14: Amends s. 943.03101, F.S., relating to counter-terrorism and immigration enforcement.
- Section 15: Amends s. 943.0311, F.S., relating to Chief of Domestic Security; duties of FDLE with respect to domestic security.
- Section 16: Amends s. 943.0312, F.S., relating to regional domestic security task forces.
- Section 17: Amends s. 943.0313, F.S., relating to Domestic Security Oversight Council.
- Section 18: Amends s. 943.325, F.S., relating to DNA database.
- Section 19: Amends s. 394.9082, F.S., conforming provisions relating to behavioral health managing entities.
- Section 20: Amends s. 409.996, F.S., conforming provisions relating to Duties of the Department of Children and Families.
- Section 21. Prohibits an appropriation to the Division of Emergency Management.
- Section 22. Provides an effective date of July 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

For the 2023-2024 fiscal year, provides a \$12 million nonrecurring appropriation to the Division of Emergency Management for the Unauthorized Alien Transport Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Local governments that administer a community ID card program may experience a reduction in expenditures resulting from being prohibited from funding such programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses may have additional workload related to the employment verification requirements and may be subject to fines related to employment verification violations.

Hospitals may be required to change their forms.

The bill may reduce criminal conduct and related negative social and economic impacts.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on state agencies related to enforcement of the provisions in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES