

1 A bill to be entitled
 2 An act relating to the enforcement of immigration laws;
 3 creating s. 448.081, F.S.; providing a short title;
 4 creating s. 448.082, F.S.; providing legislative intent;
 5 creating s. 448.083, F.S.; prohibiting the state or its
 6 political subdivisions from limiting or restricting the
 7 enforcement of federal immigration laws; providing that
 8 the state or its political subdivisions may not be
 9 prohibited from maintaining or exchanging information
 10 regarding immigration status for certain purposes;
 11 providing for enforcement and penalties; authorizing a law
 12 enforcement officer to determine immigration status under
 13 certain circumstances; providing that an alien who is in
 14 Florida and is unlawfully present in the United States
 15 commits a misdemeanor of the second degree; requiring
 16 implementation consistent with federal law; prohibiting
 17 law enforcement officers from using race, color or
 18 national origin in the enforcement of the act; creating s.
 19 448.084, F.S.; defining terms; requiring every employer to
 20 use the federal E-Verify system to verify the employment
 21 eligibility of each employee on or after a specified date;
 22 prohibiting an employer from knowingly employing an
 23 unauthorized alien; requiring that each verification be
 24 made in accordance with certain provisions of federal law;
 25 authorizing certain persons to file a complaint with the
 26 licensing agency alleging that an employer has employed an
 27 unauthorized alien; providing for enforcement and
 28 penalties; creating a rebuttable presumption for certain

29 | employers that the employer did not knowingly employ an
 30 | unauthorized alien; authorizing an employer or employee to
 31 | seek an injunction under certain circumstances;
 32 | authorizing certain persons to file a complaint with the
 33 | state attorney or attorney general alleging that an
 34 | employer has employed an unauthorized alien; authorizing
 35 | enforcement by the state attorney and attorney general;
 36 | providing civil penalties; prohibiting the filing of a
 37 | complaint based on race, color, or national origin;
 38 | providing that a person who knowingly files a false and
 39 | frivolous complaint commits a misdemeanor of the second
 40 | degree; providing for construction of the act; creating s.
 41 | 287.135, F.S.; defining terms; requiring public employers
 42 | to use the federal E-Verify system to verify the
 43 | employment eligibility of each employee; prohibiting a
 44 | public employer from knowingly employing an unauthorized
 45 | alien; creating a rebuttable presumption for certain
 46 | public employers that the public employer did not
 47 | knowingly employ an unauthorized alien; prohibiting public
 48 | employers from entering into a contract for contractual
 49 | services with contractors that are not registered and
 50 | participating in the federal E-Verify system; prohibiting
 51 | certain contractors and subcontractors from knowingly
 52 | employing an unauthorized alien; providing procedures and
 53 | requirements; creating a rebuttable presumption that
 54 | certain contractors and subcontractors did not knowingly
 55 | employ an unauthorized alien; creating s. 337.163, F.S.;
 56 | providing definitions; prohibiting the Department of

PCB JDC 11-01

ORIGINAL

2011

57 Transportation from entering into certain contracts with
 58 contractors that are not registered and participating in
 59 the federal E-Verify system; prohibiting certain
 60 contractors and subcontractors from knowingly employing an
 61 unauthorized alien; providing procedures and requirements;
 62 creating a rebuttable presumption that certain contractors
 63 and subcontractors did not knowingly employ an
 64 unauthorized alien; amending s. 901.15, F.S.; providing an
 65 additional instance whereby an arrest may be made by a law
 66 enforcement officer without a warrant; amending s.
 67 903.046, F.S.; providing additional criteria for the court
 68 to consider as to whether to release a defendant on bail
 69 or other conditions; creating s. 921.245, F.S.; providing
 70 for enhanced criminal penalties when an offense is
 71 committed by an alien unlawfully present in the United
 72 States; providing an effective date.

73

74 Be It Enacted by the Legislature of the State of Florida:

75

76 Section 1. Section 448.081, Florida Statutes, is created
 77 to read:

78 448.081 Short title.—Section 448.081 through s. 448.09 may
 79 be cited as the "Florida Immigration Enforcement Act."

80 Section 2. Section 448.082, Florida Statutes, is created
 81 to read:

82 448.082 Intent.-- The Legislature finds that there is a
 83 compelling interest in the cooperative enforcement of federal
 84 immigration laws throughout all of Florida. The Legislature

85 declares that the intent of this act is to discourage and deter
 86 the unlawful entry and presence of aliens in Florida. The
 87 provisions of this act are intended to work together to
 88 accomplish this purpose.

89 Section 3. Section 448.083, Florida Statutes, is created
 90 to read:

91 448.083 Cooperation and assistance in enforcement of
 92 immigration laws.--

93 (1) (a) No official or agency of this state or a county,
 94 municipality or other political subdivision of this state may
 95 limit or restrict the enforcement of federal immigration laws to
 96 less than the full extent permitted by federal law.

97 (b) Except as provided in federal law, officials or
 98 agencies of this state and counties, municipalities and other
 99 political subdivisions of this state may not be prohibited or in
 100 any way be restricted from sending, receiving or maintaining
 101 information relating to the immigration status, lawful or
 102 unlawful, of any individual or exchanging that information with
 103 any other federal, state or local governmental entity for the
 104 following official purposes:

105 1. Determining eligibility for any public benefit, service
 106 or license provided by the federal government, the state, or any
 107 county, municipality or other political subdivision of this
 108 state.

109 2. Verifying any claim of residence or domicile if
 110 determination of residence or domicile is required under federal
 111 law, the laws of this state or a judicial order issued pursuant
 112 to a civil or criminal proceeding in this state.

113 3. If the person is an alien, determining whether the
 114 person is in compliance with the federal registration laws
 115 prescribed by Title II, Chapter 7 of the Federal Immigration and
 116 Nationality Act.

117 4. Pursuant to 8 United States Code s. 1373 and 8 United
 118 States Code s. 1644.

119 (c)1. The Attorney General may enforce the protections of
 120 this subsection if there is reasonable cause to believe that
 121 this subsection has been violated and may commence a civil or
 122 administrative action and seek such other relief as may be
 123 appropriate. If there is a judicial finding that an entity has
 124 violated this subsection, the court shall order that the entity
 125 pay a civil penalty of not less than five hundred dollars and
 126 not more than five thousand dollars for each day that the policy
 127 has remained in effect after the filing of an action pursuant to
 128 this subsection.

129 2. The court shall collect the civil penalty prescribed in
 130 subparagraph 1. and deposit the moneys in the Violent Crime
 131 Investigative Emergency and Drug Control Strategy Implementation
 132 Account within the Department of Law Enforcement Operating Trust
 133 Fund pursuant to s. 943.042.

134 (2) (a)1. For any person who is the subject of a criminal
 135 investigation by a law enforcement official or a law enforcement
 136 agency of this state or of a county, municipality or other
 137 political subdivision of this state where reasonable suspicion
 138 exists that the person is an alien and is unlawfully present in
 139 the United States, a reasonable attempt may be made to determine
 140 the immigration status of the person.

PCB JDC 11-01

ORIGINAL

2011

141 2. For any person who is arrested by a law enforcement
142 official or a law enforcement agency of this state or of a
143 county, municipality or other political subdivision of this
144 state, where reasonable suspicion exists that the person is an
145 alien and is unlawfully present in the United States, a
146 reasonable attempt shall be made to determine the immigration
147 status of the person before release.

148 (b) Immigration status shall be verified under this
149 subsection with the federal government pursuant to 8 United
150 States Code s. 1373(c). If the person's status is reported by
151 the federal government as unlawfully present in the United
152 States, the law enforcement official or law enforcement agency
153 must, as soon as practicable, report that person to the United
154 States Immigration and Customs Enforcement or the United States
155 Customs and Border Protection.

156 (3) An alien who is in Florida and is unlawfully present
157 in the United States commits a misdemeanor of the second degree
158 punishable as provided in s. 775.082 and by a fine not to exceed
159 \$100. For a first violation of this paragraph the court shall
160 not sentence the person to more than twenty days in jail. For a
161 second or subsequent violation the court shall not sentence the
162 person to more than thirty days in jail.

163 (4) A state or local correctional facility shall
164 immediately notify the United States Immigration and Customs
165 Enforcement or the United States Customs and Border Protection
166 prior to the discharge from imprisonment of an alien unlawfully
167 present in the United States.

168 (5) In the implementation of this section, an alien's
 169 immigration status may be determined by:

170 (a) A law enforcement officer who is authorized by the
 171 federal government to verify or ascertain an alien's immigration
 172 status.

173 (b) The United States Immigration and Customs Enforcement
 174 or the United States Customs and Border Protection pursuant to 8
 175 United States Code s. 1373(c).

176 (6) This section shall be implemented in a manner
 177 consistent with federal laws regulating immigration, protecting
 178 the civil rights of all persons and respecting the privileges
 179 and immunities of United States citizens. A law enforcement
 180 official or agency of this state or a county, municipality or
 181 other political subdivision of this state may not consider race,
 182 color or national origin in the enforcement of this section
 183 except to the extent permitted by the United States Constitution
 184 or the Florida Constitution.

185 Section 4. Effective July 1, 2012, section 448.084,
 186 Florida Statutes, is created to read:

187 448.084 Use of E-Verify system required for private
 188 employers; licensing enforcement.—

189 (1) DEFINITIONS.—As used in this section, the term:

190 (a) "Agency" means an agency, department, board, or
 191 commission of this state or a county, municipality, or political
 192 subdivision issuing a license for the purpose of operating a
 193 business in this state.

194 (b) "E-Verify system" means the Employment Authorization
 195 Program, formerly the "Basic Pilot Program," under Pub. L. No.

196 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 197 30, 1996), as amended, or any successor program designated by
 198 the federal government for verification that an employee is an
 199 employment-authorized alien.

200 (c) "Employee" means any person who performs employment
 201 services in this state for an employer pursuant to an employment
 202 relationship between the person and employer. An employee does
 203 not include an independent contractor.

204 (d) "Employer" means any person or entity transacting
 205 business in this state that employs individuals. The term does
 206 not include:

- 207 1. A government employer;
- 208 2. The occupant or owner of a private residence who hires
 209 casual domestic labor to perform work customarily performed by a
 210 homeowner entirely within a private residence; or
- 211 3. That portion of labor and services provided to a person
 212 or entity by a licensed independent contractor.

213 (e) "License" means a license, permit, certificate,
 214 approval, registration, charter, or similar form of
 215 authorization required by law and issued by an agency for the
 216 purpose of operating a business. A license includes, but is not
 217 limited to:

- 218 1. Articles of incorporation.
- 219 2. A certificate of partnership, a partnership
 220 registration, or articles of organization.
- 221 3. A grant of authority issued pursuant to state or
 222 federal law.
- 223 4. A transaction privilege tax license.

224 (f) "Unauthorized alien" means an alien who is not
 225 authorized under federal law to be employed in the United
 226 States, as described in 8 United States Code s. 1324a(h) (3).
 227 This term shall be interpreted consistently with that section
 228 and any applicable federal rules or regulations.

229 (g) "Knowingly employ an unauthorized alien" has the same
 230 meaning as prescribed in 8 United States Code s. 1324a. The term
 231 shall be interpreted consistently with 8 United States Code s.
 232 1324a and any federal rule or regulation applicable to the
 233 unlawful employment of aliens.

234 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF
 235 LICENSE.—

236 (a) Every employer shall use the E-Verify system to verify
 237 the employment eligibility of all newly hired employees within
 238 the period stipulated by federal law or regulations after the
 239 hiring of the employee. However, an employer is not required to
 240 verify the employment eligibility of a continuing employee hired
 241 before the date of the applicability of the verification
 242 requirements of this section on the employer.

243 (b) A business that has not complied with paragraph (a)
 244 shall lose its license to do business in this state until the
 245 business has registered with the E-Verify system and provided
 246 the agency with a sworn affidavit stating that the business has
 247 registered with the E-Verify system.

248 (c) Paragraphs (a) and (b) apply as follows:

249 1. On or after July 1, 2012, with respect to employers
 250 employing 100 or more employees.

251 2. On or after July 1, 2013, with respect to all

252 employers.

253 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; SUSPENSION OF
 254 LICENSE.—

255 (a) An employer may not knowingly employ an unauthorized
 256 alien.

257 (b) A person who has actual or constructive knowledge that
 258 an employer employs, or has within the last 90 days employed, an
 259 unauthorized alien may file a complaint with the agency.

260 (c) Upon the receipt of a valid complaint of a violation
 261 of paragraph (a), the agency shall notify the employer of the
 262 complaint and direct the employer to notify any affected
 263 employees named in the complaint.

264 (d) The agency shall request that the federal government
 265 verify, pursuant to 8 United States Code s. 1373(c), the
 266 employment status of any employee named in the complaint.

267 (e) If the agency has reasonable cause to believe that the
 268 employer has employed an unauthorized alien, the agency shall
 269 notify the local law enforcement agency of the presence of the
 270 unauthorized alien in the jurisdiction.

271 (f)1. Upon finding that an employer has violated paragraph
 272 (a), the agency shall order the employer to:

273 a. Terminate the employment of all unauthorized aliens;
 274 and

275 b. File a sworn affidavit with the agency within 10 days
 276 after the receipt of the order. The affidavit must state that
 277 the employer has corrected the violation by:

278 (I) Terminating the unauthorized alien's employment;

279 (II) Requesting that a second or additional verification

280 of the alien's employment status be authorized by using the E-
 281 Verify system; or

282 (III) Attempting to terminate the unauthorized alien's
 283 employment, and such termination has been challenged in a court
 284 of competent jurisdiction.

285 2. If the employer fails to file the required affidavit,
 286 the agency shall suspend all applicable licenses held by the
 287 employer. All such licenses suspended shall remain suspended
 288 until the sworn affidavit is filed. Notwithstanding any other
 289 law, the suspended licenses shall be deemed to have been
 290 reinstated upon the filing of the affidavit. During the pendency
 291 of an action, the 10-day period shall be tolled. The 10-day
 292 period shall also be tolled for any period during which the
 293 federal government allows an alien to challenge the federal
 294 government's determination of his or her immigration status or
 295 employment authorization.

296 3. Licenses subject to suspension under this subsection
 297 include all licenses that are held by the employer and that are
 298 necessary to operate the employer's business at the location at
 299 which the unauthorized alien performed work. If a license is not
 300 necessary to operate the employer's business at the specific
 301 location at which the unauthorized alien performed work, but a
 302 license is necessary to operate the employer's business in
 303 general, the licenses subject to suspension under subparagraph
 304 2. include all licenses held by the employer at the employer's
 305 primary place of business.

306 (g) Upon finding a second or subsequent violation of
 307 paragraph (a) during a 2-year period, the agency shall suspend,

308 for at least 30 days, all licenses that are held by the employer
 309 and that are necessary to operate the employer's business at the
 310 location at which the unauthorized alien performed work. If a
 311 license is not necessary to operate the employer's business at
 312 the specific location at which the unauthorized alien performed
 313 work, but a license is necessary to operate the employer's
 314 business in general, the agency shall suspend all licenses held
 315 by the employer at the employer's primary place of business for
 316 30 days or upon compliance with paragraph (f), whichever occurs
 317 later.

318 (h) For the purposes of this section, compliance with
 319 subsection (2) creates a rebuttable presumption that an employer
 320 did not knowingly employ an unauthorized alien in violation of
 321 paragraph (a). An employer that establishes that it has
 322 complied in good faith with the requirements of 8 United States
 323 Code s. 1324a(b) establishes an affirmative defense that the
 324 employer did not knowingly employ an unauthorized alien. An
 325 employer is considered to have complied with the requirements of
 326 8 United States Code s. 1324a(b), notwithstanding an isolated,
 327 sporadic or accidental technical or procedural failure to meet
 328 the requirements, if there is a good faith attempt to comply
 329 with the requirements.

330 (4) INJUNCTION.—At any time after a complaint is received,
 331 an employer subject to a complaint under this section, or any
 332 employee of the employer who is alleged to be an unauthorized
 333 alien, may challenge and seek to enjoin the enforcement of this
 334 section before a court of competent jurisdiction.

335 (5) (a) A person who has actual or constructive knowledge
 336 that an employer employs, or has within the last 90 days
 337 employed, an unauthorized alien may file a complaint with the
 338 local state attorney or the state attorney general. The state
 339 attorney and attorney general may enforce this section if there
 340 is reasonable cause to believe that this section has been
 341 violated and may commence a civil or administrative action and
 342 seek such other relief as may be appropriate. If there is a
 343 judicial finding that an employer has violated this section, the
 344 court shall order that the employer pay a civil penalty of not
 345 less than five hundred dollars and not more than five thousand
 346 dollars.

347 (b) The court shall collect the civil penalty prescribed
 348 in paragraph (a) and deposit the moneys in the Violent Crime
 349 Investigative Emergency and Drug Control Strategy Implementation
 350 Account within the Department of Law Enforcement Operating Trust
 351 Fund pursuant to s. 943.042.

352 (6) A complaint made under this section may not be based
 353 on race, color, or national origin, except to the extent
 354 permitted by the United States Constitution or the Florida
 355 Constitution. A person who knowingly files a false and
 356 frivolous complaint under this section commits a misdemeanor of
 357 the second degree, punishable as provided in s. 775.082 or s.
 358 775.083.

359 (7) CONSTRUCTION.—This section shall be enforced without
 360 regard to race, color, or national origin and shall be construed
 361 in a manner so as to be fully consistent with any applicable
 362 provisions of federal law.

363 Section 5. Effective January 1, 2012, section 287.135,
 364 Florida Statutes, is created to read:

365 287.135 Verification of immigration status; public
 366 employers.--

367 (1) As used in the section, the term:

368 (a) "Contractor" means a person who has entered or is
 369 attempting to enter into a public contract for services with a
 370 public employer.

371 (b) "E-Verify system" means the Employment Authorization
 372 Program, formerly the "Basic Pilot Program," under Pub. L. No.
 373 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 374 30, 1996), as amended, or any successor program designated by
 375 the federal government for verification that an employee is an
 376 employment-authorized alien.

377 (c) "Knowingly employ an unauthorized alien" has the same
 378 meaning as prescribed in 8 United States Code s. 1324a. The term
 379 shall be interpreted consistently with 8 United States Code s.
 380 1324a and any federal rule or regulation applicable to the
 381 unlawful employment of aliens.

382 (d) "Public employer" means any department, agency,
 383 county, municipality, or political subdivision of the state.

384 (e) "Subcontractor" means any supplier, distributor,
 385 vendor, or firm furnishing supplies or services to or for a
 386 contractor or another subcontractor.

387 (f) "Unauthorized alien" means an alien who is not
 388 authorized under federal law to be employed in the United
 389 States, as described in 8 United States Code s. 1324a(h)(3).

390 This term shall be interpreted consistently with that section

391 and any applicable federal rules or regulations.

392 (2) Every public employer shall use the E-Verify system to
 393 verify the employment eligibility of all newly hired employees
 394 within the period stipulated by federal law or regulations after
 395 the hiring of the employee. However, a public employer is not
 396 required to verify the employment eligibility of a continuing
 397 employee hired before the date of the applicability of the
 398 verification requirements of this section on the employer.

399 (3) (a) A public employer may not knowingly employ an
 400 unauthorized alien.

401 (b) For the purposes of this subsection, compliance with
 402 subsection (2) creates a rebuttable presumption that a public
 403 employer did not knowingly employ an unauthorized alien. A
 404 public employer that establishes that it has complied in good
 405 faith with the requirements of 8 United States Code s. 1324a(b)
 406 establishes an affirmative defense that the public employer did
 407 not knowingly employ an unauthorized alien. A public employer
 408 is considered to have complied with the requirements of 8 United
 409 States Code s. 1324a(b), notwithstanding an isolated, sporadic
 410 or accidental technical or procedural failure to meet the
 411 requirements, if there is a good faith attempt to comply with
 412 the requirements.

413 (4) (a) A contractor or subcontractor may not knowingly
 414 employ an unauthorized alien.

415 (b)1. A public employer may not enter into a contract for
 416 the physical performance of services unless the contractor
 417 registers and participates in the E-Verify system.

418 2. A contractor or subcontractor may not enter into a

419 contract or subcontract with a public employer in connection
420 with the physical performance of services unless the contractor
421 or subcontractor registers with and uses the E-Verify system for
422 the purpose of verifying information of all newly hired
423 employees.

424 (c) If a contractor uses a subcontractor, the
425 subcontractor shall certify to the contractor that the
426 subcontractor, at the time of certification, does not employ or
427 contract with an unauthorized alien.

428 (d) A contractor shall maintain a copy of the
429 certification of a subcontractor throughout the duration of the
430 term of a contract with the subcontractor.

431 (e) If a contractor knows that a subcontractor is in
432 violation of this subsection, the contractor shall terminate a
433 contract with the subcontractor for the violation.

434 (f) If a public employer knows that a contractor is in
435 violation of this subsection, the public employer shall
436 immediately terminate the contract with the contractor and the
437 contractor is not eligible for public contracts for 1 year after
438 the date of termination. If the public employer has knowledge
439 that a subcontractor has violated this subsection, and the
440 contractor has otherwise complied with this subsection, the
441 public employer shall promptly notify the contractor and order
442 the contractor to terminate the contract with the noncompliant
443 subcontractor.

444 (g) A contract terminated pursuant to paragraphs (e) or
445 (f) is not a breach of contract and may not be considered as
446 such by the contractor or subcontractor.

447 (h) A contractor or subcontractor may file an action with
 448 a circuit or county court having jurisdiction in the county to
 449 challenge a termination of a contract under this subsection no
 450 later than 20 days after the date on which the contract or
 451 subcontract was terminated.

452 (i) For the purposes of this subsection, compliance with
 453 subparagraphs (b)1. or (b)2. creates a rebuttable presumption
 454 that a contractor or subcontractor did not knowingly employ an
 455 unauthorized alien. A contractor or subcontractor that
 456 establishes that it has complied in good faith with the
 457 requirements of 8 United States Code s. 1324a(b) establishes an
 458 affirmative defense that the contractor or subcontractor did not
 459 knowingly employ an unauthorized alien. A contractor or
 460 subcontractor is considered to have complied with the
 461 requirements of 8 United States Code s. 1324a(b),
 462 notwithstanding an isolated, sporadic or accidental technical or
 463 procedural failure to meet the requirements, if there is a good
 464 faith attempt to comply with the requirements.

465 (5) The provisions of this section shall be construed in a
 466 manner so as to be fully consistent with any applicable federal
 467 law and shall be enforced without regard to race, color, or
 468 national origin.

469 Section 6. Effective January 1, 2012, section 337.163,
 470 Florida Statutes, is created to read:

471 337.163 Compliance with federal work-authorization
 472 program.-

473 (1) As used in this section, the term:

474 (a) "Contractor" means a person who has entered or is

475 attempting to enter into a contract with the department for
 476 services under this chapter.

477 (b) "E-Verify system" means the Employment Authorization
 478 Program, formerly the "Basic Pilot Program," under Pub. L. No.
 479 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 480 30, 1996), as amended, or any successor program designated by
 481 the federal government for verification that an employee is an
 482 employment-authorized alien.

483 (c) "Knowingly employ an unauthorized alien" has the same
 484 meaning as prescribed in 8 United States Code s. 1324a. The term
 485 shall be interpreted consistently with 8 United States Code s.
 486 1324a and any federal rule or regulation applicable to the
 487 unlawful employment of aliens.

488 (d) "Subcontractor" means any supplier, distributor,
 489 vendor, or firm furnishing supplies or services to or for a
 490 contractor or another subcontractor under this chapter.

491 (e) "Unauthorized alien" means an alien who is not
 492 authorized under federal law to be employed in the United
 493 States, as described in 8 United States Code s. 1324a(h)(3).
 494 This term shall be interpreted consistently with that section
 495 and any applicable federal rules or regulations.

496 (2)(a) A contractor or subcontractor may not knowingly
 497 employ an unauthorized alien.

498 (b) The department may not enter into a contract under
 499 this chapter for contractual services unless the contractor
 500 registers and participates in the E-Verify system.

501 (c) A contractor who receives a contract award under this
 502 chapter for contractual services may not execute a contract,

503 purchase order, or subcontract in connection with the award
 504 unless the contractor and all subcontractors providing services
 505 for the contractor registers and participates in the E-Verify
 506 system. The contractor shall certify in writing to the
 507 department that it is in compliance with this section.

508 (d) A contractor shall ensure that each subcontractor
 509 providing services for the contractor registers and participates
 510 in the E-Verify system. Each subcontractor shall certify in
 511 writing to the contractor that it is in compliance with this
 512 section. A contractor shall maintain a copy of the certification
 513 of a subcontractor throughout the duration of the term of a
 514 contract with the subcontractor.

515 (e) If a contractor knows that a subcontractor is in
 516 violation of this subsection, the contractor shall terminate a
 517 contract with the subcontractor for the violation.

518 (f) If the department knows that a contractor is in
 519 violation of this section, the department shall immediately
 520 terminate the contract with the contractor and the contractor is
 521 not eligible for public contracts for 1 year after the date of
 522 termination. If the department has knowledge that a
 523 subcontractor has violated this section, and the contractor has
 524 otherwise complied with this section, the department shall
 525 promptly notify the contractor and order the contractor to
 526 terminate the contract with the noncompliant subcontractor.

527 (g) A contract terminated pursuant to paragraphs (e) or
 528 (f) is not a breach of contract and may not be considered as
 529 such by the contractor or subcontractor.

530 (h) A contractor or subcontractor may file an action with

531 a circuit or county court having jurisdiction in the county to
 532 challenge a termination of a contract under this subsection no
 533 later than 20 days after the date on which the contract or
 534 subcontract was terminated.

535 (i) For the purposes of this subsection, compliance with
 536 paragraphs (b) or (c) creates a rebuttable presumption that a
 537 contractor or subcontractor did not knowingly employ an
 538 unauthorized alien. A contractor or subcontractor that
 539 establishes that it has complied in good faith with the
 540 requirements of 8 United States Code s. 1324a(b) establishes an
 541 affirmative defense that the contractor or subcontractor did not
 542 knowingly employ an unauthorized alien. A contractor or
 543 subcontractor is considered to have complied with the
 544 requirements of 8 United States Code s. 1324a(b),
 545 notwithstanding an isolated, sporadic or accidental technical or
 546 procedural failure to meet the requirements, if there is a good
 547 faith attempt to comply with the requirements.

548 (3) The provisions of this section shall be construed in a
 549 manner so as to be fully consistent with any applicable federal
 550 law and shall be enforced without regard to race, color, or
 551 national origin.

552 Section 7. Subsection (16) is added to section 901.15,
 553 Florida Statutes, to read:

554 901.15 When arrest by officer without warrant is lawful.—A
 555 law enforcement officer may arrest a person without a warrant
 556 when:

557 (16) The officer has probable cause to believe that the
 558 person to be arrested is unlawfully in the United States in
 559 violation of state and federal law.

560 Section 8. Paragraph (c) of subsection (2) of section
 561 903.046, Florida Statutes, is amended to read:

562 903.046 Purpose of and criteria for bail determination.—

563 (2) When determining whether to release a defendant on
 564 bail or other conditions, and what that bail or those conditions
 565 may be, the court shall consider:

566 (c) The defendant's family ties, length of residence in
 567 the community, legal residency status in the United States,
 568 employment history, financial resources, and mental condition.

569 Section 9. Section 921.245, Florida Statutes, is created
 570 to read:

571 921.245 Illegal alien multiplier; enhanced penalties.--
 572 Upon a finding by the fact finder that the defendant committed
 573 the charged offense while the defendant is an alien and is
 574 unlawfully present in the United States, the penalty for any
 575 felony or misdemeanor, or any delinquent act or violation of law
 576 that would be a felony or misdemeanor if committed by an adult,
 577 may be enhanced. Penalty enhancement affects the applicable
 578 statutory maximum penalty only. Each of the findings required
 579 as a basis for such sentence shall be found beyond a reasonable
 580 doubt. The enhancement will be as follows:

581 (1) (a) A misdemeanor of the second degree may be punished
 582 as if it were a misdemeanor of the first degree.

583 (b) A misdemeanor of the first degree may be punished as
 584 if it were a felony of the third degree. For purposes of

PCB JDC 11-01

ORIGINAL

2011

585 sentencing under ch. 921 and determining incentive gain-time
586 eligibility under ch. 944, such offense is ranked in level 1 of
587 the offense severity ranking chart.

588 (2) (a) A felony of the third degree may be punished as if
589 it were a felony of the second degree.

590 (b) A felony of the second degree may be punished as if it
591 were a felony of the first degree.

592 (c) A felony of the first degree may be punished as if it
593 were a life felony.

594

595 For purposes of sentencing under ch. 921 and determining
596 incentive gain-time eligibility under ch. 944, such felony
597 offense is ranked as provided in s. 921.0022 or s. 921.0023, and
598 without regard to the penalty enhancement in this subsection.

599 Section 10. Except as otherwise provided herein, this act
600 shall take effect October 1, 2011.