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1                   A bill to be entitled  
2     An act relating to the verification of employment  
3     eligibility; defining terms; requiring every employer to  
4     use the Employment Authorization Program to verify the  
5     employment eligibility of each employee on or after a  
6     specified date; providing that a business that does not  
7     use the E-Verify system to verify the employment  
8     eligibility of the employee shall lose its license to do  
9     business in this state until the business has registered  
10    with the E-verify system; requiring that each verification  
11    be made in accordance with certain provisions of federal  
12    law; prohibiting an employer from employing an  
13    unauthorized alien; authorizing certain persons to file a  
14    complaint with the Department of Business and Professional  
15    Regulation or the Agency for Workforce Innovation alleging  
16    that an employer has employed an unauthorized alien;  
17    prohibiting the filing of a complaint based on race,  
18    color, or national origin; providing that a person who  
19    knowingly files a false and frivolous complaint commits a  
20    misdemeanor of the second degree; providing criminal  
21    penalties; requiring the department or the Agency for  
22    Workforce Innovation to notify the employer upon receipt  
23    of a complaint; requiring the department or the Agency for  
24    Workforce Innovation to investigate whether a violation  
25    has occurred; authorizing the department and the Agency  
26    for workforce Innovation to issue a subpoena for the  
27    production of documents; requiring the department or the  
28    Agency for Workforce Innovation to request that the

29 Federal Government verify the employment eligibility of  
30 any employee named in a complaint; prohibiting the  
31 department or the Agency for Workforce Innovation from  
32 independently making a final determination regarding  
33 whether an employee is authorized to be employed in the  
34 United States; requiring the department or the Agency for  
35 Workforce Innovation to notify certain entities after  
36 determining that the employer has employed an unauthorized  
37 alien; prohibiting the department or the Agency for  
38 Workforce Innovation from acting on a complaint for a  
39 violation of law occurring before a specified date;  
40 requiring the department or the Agency for Workforce  
41 Innovation to order an employer to take certain action  
42 upon a first violation of the prohibition against hiring  
43 an unauthorized alien; requiring that certain licenses of  
44 an employer be suspended if the employer fails to file an  
45 affidavit confirming the termination of employment of an  
46 unauthorized alien; providing for reinstatement of such  
47 licenses under certain circumstances; requiring that the  
48 department or the Agency for Workforce Innovation take  
49 certain action against an employer for a second violation  
50 within a specified period following the prohibition  
51 against hiring an unauthorized alien; requiring the Agency  
52 for Workforce Innovation to maintain a public database  
53 containing certain information and make such information  
54 available on its website; authorizing the department or  
55 the Agency for Workforce Innovation to apply to the  
56 appropriate circuit court for a judicial order directing

57        an employer to comply with an order issued by the  
58        department or the Agency for Workforce Innovation;  
59        creating a rebuttable presumption for certain employers  
60        that the employer did not knowingly employ an unauthorized  
61        alien; authorizing an employer or employee to seek an  
62        injunction under certain circumstances; providing that  
63        certain actions by an employer constitute an unfair trade  
64        practice; providing that an employee aggrieved by such  
65        actions has a private cause of action against the employer  
66        for a deceptive and unfair trade practice; providing for  
67        an award of court costs and attorney's fees; providing  
68        that a cause of action does not exist against an employer  
69        participating in the E-Verify system on the date of such  
70        actions; providing for construction of the act; creating  
71        s. 287.135, F.S.; defining terms; requiring every public  
72        employer to register with and participate in the E-Verify  
73        system for specified purposes; prohibiting a public  
74        employer, contractor, or subcontractor from entering into  
75        a contract for the physical performance of services in  
76        this state unless the contractor or subcontractor  
77        registers and participates in the system; requiring that  
78        subcontractors certify certain information to contractors  
79        by specified means; requiring that a contractor maintain a  
80        copy of the certification for a specified period;  
81        authorizing a contractor to terminate a contract with a  
82        subcontractor under certain conditions; providing that  
83        such termination is not a breach of contract; authorizing  
84        a subcontractor to challenge a termination within a

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specified period; requiring that a public contractor terminate a contract if the contractor or subcontractor is in violation of the act; providing that such termination is not a breach of contract; authorizing a contractor or subcontractor to challenge such a termination within a specified period; providing guidelines for interpretation of the provisions of the act; providing for severability; providing an effective date.

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

Section 1. Use of E-verify system required for private employers; business licensing enforcement; private right of action for displaced worker.—

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

(a) "Agency" means an agency, department, board, or commission of this state or a county, municipality, or town issuing a license for the purpose of operating a business in this state.

(b) "Department" means the Department of Business and Professional Regulation.

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

(d) "Employee" means any person who performs employment

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113 services in this state for an employer pursuant to an employment  
114 relationship between the person and employer. An employee does  
115 not include an independent contractor.

116 (e) "Employer" means any individual or type of  
117 organization transacting business in this state which holds or  
118 has applied for a license issued by an agency and employs  
119 individuals who perform employment services. The term does not  
120 include an entity that hires an independent contractor to  
121 perform work or the occupant or owner of a private residence who  
122 hires casual domestic labor to perform work customarily  
123 performed by a homeowner entirely within a private residence.

124 (f) "License" means a license, permit, certificate,  
125 approval, registration, charter, or similar form of  
126 authorization required by law and issued by an agency for the  
127 purpose of operating a business. A license includes, but is not  
128 limited to:

129 1. Articles of incorporation.

130 2. A certificate of partnership, a partnership  
131 registration, or articles of organization.

132 3. A grant of authority issued pursuant to state or  
133 federal law.

134 4. A transaction privilege tax license.

135 (g) "Unauthorized alien" means an alien is not authorized  
136 under federal law to be employed in the United States, as  
137 described in 8 U.S.C. 1324a(h) (3). This term shall be  
138 interpreted consistently with that section and any applicable  
139 federal rules or regulations.

140 (h) "Knowingly employ an unauthorized alien" has the same

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141 meaning as prescribed in 8 U.S.C. 1324a. The term shall be  
142 interpreted consistently with s. 1324a and any federal rule or  
143 regulation applicable to the unlawful employment of aliens.

144 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF  
145 BUSINESS LICENSE.—

146 (a) Beginning January 1, 2012, every employer shall, after  
147 making an offer of employment which has been accepted by an  
148 employee, use the E-Verify system to verify the employment  
149 eligibility of the employee. Verification must occur within the  
150 period stipulated by federal law or regulations after the hiring  
151 of the employee. However, an employer is not required to verify  
152 the employment eligibility of a continuing employee hired before  
153 the date of the employer's registration with the system.

154 (b) A business that has not complied with paragraph (a)  
155 shall lose its license to do business in this state until the  
156 business has registered with the E-verify system and provided  
157 the department with an affidavit stating that the business has  
158 registered with the E-verify system.

159 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE  
160 AND FRIVOLOUS COMPLAINTS; VIOLATION; CLASSIFICATION; SUSPENSION  
161 AND REVOCATION OF LICENSE.—

162 (a) An employer may not employ an unauthorized alien.

163 (b) A person who has actual or constructive knowledge that  
164 an employer employs, or has within the last 90 days employed, an  
165 unauthorized alien may file a complaint with the department or  
166 the Agency for Workforce Innovation.

167 (c) A complaint may not be based on race, color, or  
168 national origin, except to the extent permitted by the United

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169 States Constitution or the State Constitution.

170 (d) A person who knowingly files a false and frivolous  
171 complaint under this subsection commits a misdemeanor of the  
172 second degree, punishable as provided in s. 775.082 or s.  
173 775.083.

174 (e) Upon the receipt of a valid complaint of a violation  
175 of paragraph (a), the department or the Agency for Workforce  
176 Innovation shall notify the employer of the complaint and direct  
177 the employer to notify any affected employees named in the  
178 complaint.

179 (f) The department or the Agency for Workforce Innovation  
180 shall investigate whether a violation has occurred and hold an  
181 administrative hearing at which the employer may present any  
182 evidence he or she desires and at which the employer has the  
183 right to counsel. The department or the Agency for Workforce  
184 Innovation shall request that the Federal Government verify,  
185 pursuant to 8 U.S.C. 1373(c), the employment status of any  
186 employee named in the complaint. The department or Agency for  
187 Workforce Innovation may not independently make a final  
188 determination as to whether a particular employee is an  
189 unauthorized alien. The department or agency shall rely upon  
190 verification of employment authorization provided by the Federal  
191 Government.

192 (g) The department or agency may issue a subpoena to  
193 produce employment records that relate to the recruitment,  
194 hiring, employment, or termination policies, practices, or acts  
195 of employment relating to the investigation of a valid  
196 complaint.

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197       (h) If the department or Agency for Workforce Innovation  
198 confirms that the employer has employed an unauthorized alien,  
199 the department or agency shall notify:

200       1. The United States Immigration and Customs Enforcement  
201 Agency of the identity of the unauthorized alien and, if known,  
202 the alien's address or location in the state; and

203       2. The local law enforcement agency of the presence of the  
204 unauthorized alien in the jurisdiction.

205       (i) The department or Agency for Workforce Innovation may  
206 not act upon a complaint against any employer for any violation  
207 occurring before January 1, 2012.

208       (j)1. Upon finding that an employer has violated paragraph  
209 (a), the department or Agency for Workforce Innovation shall  
210 order the employer to:

211       a. Terminate the employment of all unauthorized aliens;  
212 and

213       b. File a sworn affidavit with the department within 10  
214 days after the receipt of the order. The affidavit must state  
215 that the employer has corrected the violation by:

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

217       (II) Requesting that a second or additional verification  
218 of the alien's employment status be authorized, by using the E-  
219 Verify system; or

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

223       2. If the employer fails to file the required affidavit,  
224 the department or Agency for Workforce Innovation shall order



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the appropriate agencies to suspend all applicable licenses held by the employer. All such licenses suspended shall remain suspended until the affidavit is filed.

Notwithstanding any other law, the suspended licenses shall be deemed to have been reinstated upon the filing of the affidavit. During the pendency of an action, the 10-day period shall be tolled. The 10-day period shall also be tolled during any period during which the Federal Government allows an alien to challenge the Federal Government's determination of his or her immigration status or employment authorization.

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

4. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, by July 1, 2011, to establish procedures for an agency to exempt certain licenses issued by the agency which the agency determines, with the concurrence of the department, are unrelated to operating a business in this state.

(k) Upon finding a second or subsequent violation of

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253 paragraph (a) during a 2-year period, the department or the  
254 Agency for Workforce Innovation shall order the appropriate  
255 agencies to suspend, for at least 30 days, all licenses that are  
256 held by the employer and that are necessary to operate the  
257 employer's business at the location at which the unauthorized  
258 alien performed work. If a license is not necessary to operate  
259 the employer's business at the specific location at which the  
260 unauthorized alien performed work, but a license is necessary to  
261 operate the employer's business in general, the department or  
262 the Agency for Workforce Innovation shall order the appropriate  
263 agencies to suspend all licenses held by the employer at the  
264 employer's primary place of business. On receipt of the order  
265 and notwithstanding any other law, the appropriate agencies  
266 shall immediately suspend such licenses for at least 30 days.

267 (l) The Agency for Workforce Innovation shall maintain a  
268 public database containing copies of all orders issued pursuant  
269 to this section and make such information available on its  
270 website.

271 (m) If the department or the Agency for Workforce  
272 Innovation determines that an agency or employer has failed to  
273 comply with an order under this section, the department or the  
274 Agency for Workforce Innovation may apply to the circuit court  
275 for a judicial order directing the agency or employer to comply  
276 with the order of the department or Agency for Workforce  
277 Innovation.

278 (n) For the purposes of this section, compliance with  
279 subsection (2) creates a rebuttable presumption that an employer  
280 did not knowingly employ an unauthorized alien in violation of

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paragraph (a).

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

(5) DECEPTIVE AND UNFAIR TRADE PRACTICE.—

(a) An employer commits a deceptive and unfair trade practice in violation of part II of chapter 501, Florida Statutes, if he or she discharges an United States citizen or legal permanent resident alien employee who has applied for naturalization, if, on the date of discharge, an unauthorized alien worker was employed by the employer at the same job site or in the same job classification elsewhere in the state.

(b) The discharged employee has a cause of action against the employer for civil penalties and attorney's fees for the deceptive and unfair trade practice.

(c) The wrongfully discharged employee is entitled to reinstatement, back pay, court costs, and attorney's fees. Criminal or civil sanctions, including fines, shall not be imposed against an employer for a violation of this subsection.

(d) A cause of action under this subsection does not exist against an employer who, on the date of discharge, was enrolled and participating in the E-Verify system.

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

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Section 2. Section 287.135, Florida Statutes, is created to read:

287.135 Verification of immigration status; public employers.—

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

(a) "Contractor" means a person who has entered or is attempting to enter into a public contract for services with a state agency or political subdivision.

(b) "E-Verify system" means the system for electronic verification of the work-authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Division C, Title IV, s. 403(a), as amended, and operated by the United States Department of Homeland Security, or a successor work-authorization program designated by the department or other federal agency authorized to verify the work-authorization status of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

(c) "Public employer" means any department, agency, or political subdivision of the state.

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

(2) (a) Every public employer shall register with and participate in the E-Verify system for the purpose of verifying the work authorization status of all new employees.

(b)1. A public employer may not enter into a contract for the physical performance of services unless the contractor

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337 registers and participates in the E-Verify system.

338 2. A contractor or subcontractor may not enter into a  
339 contract or subcontract with a public employer in connection  
340 with the physical performance of services unless the contractor  
341 or subcontractor registers with and uses the E-Verify system for  
342 the purpose of verifying information of all new employees  
343 employed within the state.

344 (3) (a) If a contractor uses a subcontractor, the  
345 subcontractor shall certify to the contractor in a manner that  
346 does not violate federal law that the subcontractor, at the time  
347 of certification, does not employ or contract with an  
348 unauthorized alien.

349 (b) A contractor shall maintain a copy of the  
350 certification of a subcontractor throughout the duration of the  
351 term of a contract with the subcontractor.

352 (4) (a) If a contractor knows that a subcontractor is in  
353 violation of this section, the contractor shall terminate a  
354 contract with the subcontractor for the violation.

355 (b) A contract terminated pursuant to paragraph (a) is not  
356 a breach of contract and may not be considered as such by the  
357 contractor or the subcontractor.

358 (c) A subcontractor may file an action with a circuit or  
359 county court having jurisdiction in the county to challenge a  
360 termination of a contract under paragraph (a) no later than 20  
361 days after the date on which the contractor terminates the  
362 contract with the subcontractor.

363 (5) (a) If a public employer knows that a contractor is  
364 knowingly in violation of this section, the public employer

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shall immediately terminate the contract with the contractor and the contractor is not eligible for public contracts for 1 year after the date of termination. If the public employer has knowledge that a subcontractor has violated this section, and the contractor has otherwise complied with this section, the public employer shall promptly notify the contractor and order the contractor to terminate the contract with the noncompliant subcontractor.

(b) A contract terminated pursuant to paragraph (a) is not a breach of contract and may not be considered as such by the contractor or subcontractor.

(c) A contractor or subcontractor may file an action with a circuit or county court having jurisdiction in the county to challenge a termination of a contract under paragraph (a) no later than 20 days after the date on which the contract or subcontract was terminated.

(6) The provisions of this section shall be construed in a manner so as to be fully consistent with any applicable federal law.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect the remaining provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act shall take effect July 1, 2011.