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1
2 An act relating to the verification of employment
3 eligibility; amending s. 288.061, F.S.; prohibiting
4 the approval of certain economic development incentive
5 applications after a specified date; requiring an
6 awardee to repay certain moneys within a specified
7 timeframe under certain circumstances; creating s.
8 448.095, F.S.; providing definitions; requiring public
9 employers, contractors, and subcontractors to register
10 with and use the E-Verify system; prohibiting such
11 entities from entering into a contract unless each
12 party to the contract registers with and uses the E-
13 Verify system; requiring a subcontractor to provide a
14 contractor with a certain affidavit; requiring a
15 contractor to maintain a copy of such affidavit;
16 authorizing the termination of a contract under
17 certain conditions; providing that such termination is
18 not a breach of contract; authorizing a challenge to
19 such termination; providing certain liability for
20 contractors if a contract is terminated; requiring
21 private employers to verify the employment eligibility
22 of newly hired employees beginning on a specified
23 date; providing an exception; providing acceptable
24 methods for verifying employment eligibility;
25 requiring a private employer to maintain certain
26 documentation for a specified time period; providing
27 specified immunity and nonliability for private
28 employers; creating a rebuttable presumption for
29 private employers; requiring private employers to

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30 provide copies of certain documentation, upon request,
31 to specified persons and entities for certain
32 purposes; prohibiting specified persons and entities
33 from making a determination as to whether a person is
34 an unauthorized alien; requiring a specified affidavit
35 from certain private employers; providing for the
36 suspension or permanent revocation of certain licenses
37 under certain circumstances; providing construction;
38 providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Subsection (6) of section 288.061, Florida
43 Statutes, is renumbered as subsection (7), and a new subsection
44 (6) is added to that section to read:

45 288.061 Economic development incentive application
46 process.—

47 (6) Beginning July 1, 2020, the executive director may not
48 approve an economic development incentive application unless the
49 application includes proof to the department that the applicant
50 business is registered with and uses the E-Verify system, as
51 defined in s. 448.095, to verify the work authorization status
52 of all newly hired employees. If the department determines that
53 an awardee is not complying with this subsection, the department
54 must notify the awardee by certified mail of the department's
55 determination of noncompliance and the awardee's right to appeal
56 the determination. Upon a final determination of noncompliance,
57 the awardee must repay all moneys received as an economic
58 development incentive to the department within 30 days after the

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59 final determination.

60 Section 2. Section 448.095, Florida Statutes, is created to
61 read:

62 448.095 Employment eligibility.—

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

64 (a) "Agency" means any agency, department, board, or
65 commission of this state or a county or municipality in this
66 state that issues a license to operate a business in this state.

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

71 (c) "Department" means the Department of Economic
72 Opportunity.

73 (d) "Employee" means a person filling an authorized and
74 established position who performs labor or services for a public
75 or private employer in exchange for salary, wages, or other
76 remuneration.

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

81 (f) "Legal alien" means a person who is or was lawfully
82 present or permanently residing legally in the United States and
83 allowed to work at the time of employment and remains so
84 throughout the duration of that employment.

85 (g) "License" means a franchise, a permit, a certificate,
86 an approval, a registration, a charter, or any similar form of
87 authorization required by state law and issued by an agency for

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the purpose of operating a business in this state. The term includes, but is not limited to:

1. An article of incorporation.

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

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

4. A transaction privilege tax license.

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

1. A public employer;

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

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

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

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

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117 (i) "Public employer" means an entity within state,
118 regional, county, local, or municipal government, whether
119 executive, judicial, or legislative, or any public school,
120 community college, or state university that employs persons who
121 perform labor or services for that employer in exchange for
122 salary, wages, or other remuneration or that enters or attempts
123 to enter into a contract with a contractor.

124 (j) "Subcontractor" means a person or entity that provides
125 labor, supplies, or services to or for a contractor or another
126 subcontractor in exchange for salary, wages, or other
127 remuneration.

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

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

134 (a) Beginning January 1, 2021, every public employer,
135 contractor, and subcontractor shall register with and use the E-
136 Verify system to verify the work authorization status of all
137 newly hired employees. A public employer, contractor, or
138 subcontractor may not enter into a contract unless each party to
139 the contract registers with and uses the E-Verify system.

140 (b)1. If a contractor enters into a contract with a
141 subcontractor, the subcontractor must provide the contractor
142 with an affidavit stating that the subcontractor does not
143 employ, contract with, or subcontract with an unauthorized
144 alien.

145 2. The contractor shall maintain a copy of such affidavit

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146 for the duration of the contract.

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

151 2. A public employer that has a good faith belief that a
152 subcontractor knowingly violated this subsection, but the
153 contractor otherwise complied with this subsection, shall
154 promptly notify the contractor and order the contractor to
155 immediately terminate the contract with the subcontractor.

156 3. A contract terminated under subparagraph 1. or
157 subparagraph 2. is not a breach of contract and may not be
158 considered as such.

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

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

167 (f) A contractor is liable for any additional costs
168 incurred by a public employer as a result of the termination of
169 a contract.

170 (3) PRIVATE EMPLOYERS.—

171 (a) Beginning January 1, 2021, a private employer shall,
172 after making an offer of employment which has been accepted by a
173 person, verify such person's employment eligibility. A private
174 employer is not required to verify the employment eligibility of

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175 a continuing employee hired before January 1, 2021. However, if
176 a person is a contract employee retained by a private employer,
177 the private employer must verify the employee's employment
178 eligibility upon the renewal or extension of his or her
179 contract.

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

182 1. Using the E-Verify system; or
183 2. Requiring the person to provide the same documentation
184 that is required by the United States Citizenship and
185 Immigration Services on its Employment Eligibility Verification
186 form (Form I-9).

187
188 The private employer must retain a copy of the documentation
189 provided under this subparagraph for at least 3 years after the
190 person's initial date of employment.

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

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

201 (e) For the purpose of enforcement of this section, the
202 following persons or entities may request, and a private
203 employer must provide, copies of any documentation relied upon

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by the private employer for the verification of a person's employment eligibility, including, but not limited to, any documentation required under paragraph (b):

1. The Department of Law Enforcement.
2. The Attorney General.
3. The state attorney.
4. The statewide prosecutor.

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

(f) If a private employer does not comply with paragraph (b), the department shall require the private employer to provide an affidavit to the department stating that the private employer will comply with paragraph (b), the private employer has terminated the employment of all unauthorized aliens in this state, and the employer will not intentionally or knowingly employ an unauthorized alien in this state. If the private employer does not provide the required affidavit within 30 days after the department's request, the appropriate licensing agency shall suspend all applicable licenses held by the private employer until the private employer provides the department with the required affidavit. For purposes of this paragraph, the licenses that are subject to suspension under this paragraph 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

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work, but a license is necessary to operate the private employer's business in general, the licenses that are subject to suspension under this paragraph are all licenses that are held by the private employer at the private employer's primary place of business.

(g) For any private employer found to have violated paragraph (f) three times within any 36 month period, the appropriate licensing agency shall permanently revoke 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, the appropriate licensing agency shall permanently revoke all licenses that are held by the private employer at the private employer's primary place of business.

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

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