

# Proposed Florida Citizens Employment Protection Act

1                   A bill to be entitled  
2           An act relating to verification of immigration status;  
3           defining the terms "agency," "Employment Authorization  
4           Program," "employee," "employer," "unauthorized alien,"  
5           and "license"; requiring that every employer verify the  
6           employment eligibility of each employee using the  
7           Employment Authorization Program after a specified  
8           date; providing an exemption from such requirement;  
9           requiring that such verification be made in accordance  
10          with certain provisions of federal law; prohibiting an  
11          employer from employing an unauthorized alien;  
12          authorizing certain persons to file a complaint with  
13          the Department of Business and Professional Regulation  
14          or the Agency for Workforce Innovation; providing that  
15          a person who knowingly files a false and frivolous  
16          complaint commits a misdemeanor of the second degree;  
17          requiring that the department or agency notify the  
18          employer upon receipt of such complaint; requiring that  
19          the department or agency investigate whether a  
20          violation has occurred and hold an administrative  
21          hearing; providing that an employer has certain rights  
22          at such hearing; requiring that the department or  
23          agency request that the Federal Government verify the  
24          employment authorization of any employee referred to in  
25          a complaint; prohibiting the department or agency from  
26          independently making a final determination regarding  
27          whether an alien is authorized to be employed in the  
28          United States; requiring that the department or agency  
29          notify certain entities after determining that a  
30          complaint is not frivolous; prohibiting the department  
31          or agency from acting on a complaint for a violation  
32          occurring before a specified date; requiring that the  
33          department or agency order an employer to take certain  
34          action upon a first violation of the prohibition

# Proposed Florida Citizens Employment Protection Act

35 against hiring an unauthorized alien; requiring that  
36 certain licenses of an employer be suspended if the  
37 employer fails to file an affidavit confirming the  
38 termination of employment of unauthorized aliens;  
39 providing for reinstatement of such licenses under  
40 certain circumstances; requiring that the department or  
41 agency take certain action against an employer for a  
42 second violation within a specified period following  
43 the prohibition against hiring an unauthorized alien;  
44 requiring that the Agency for Workforce Innovation  
45 maintain a public database containing certain  
46 information and make such information available on its  
47 website; authorizing the department or agency to apply  
48 to the appropriate circuit court for a judicial order  
49 directing an employer to comply with an order issued by  
50 the department or agency; providing that certain  
51 employers have a rebuttable presumption that such  
52 employer did not knowingly employ an unauthorized  
53 alien; authorizing an employer that is the subject of a  
54 complaint or an employee alleged to be an unauthorized  
55 alien to challenge or seek to enjoin the enforcement of  
56 certain provisions in a court of competent  
57 jurisdiction; providing that certain actions by an  
58 employer constitute an unfair trade practice; providing  
59 that an employee aggrieved by such actions has a  
60 private cause of action against the employer for such  
61 unfair trade practice; providing that a cause of action  
62 does not exist against an employer participating in the  
63 E-Verify Program on the date of such actions;.  
64 requiring that every public employer register and  
65 participate in the E-Verify program for specified  
66 purposes; prohibiting a public employer, contractor, or  
67 subcontractor from entering into a contract for the  
68 physical performance of services in this state unless

Proposed Florida Citizens Employment Protection Act

69 the contractor or subcontractor registers and  
70 participates in the program; requiring that  
71 subcontractors certify certain information to  
72 contractors by specified means; requiring that a  
73 contractor maintain a copy of such certification for a  
74 specified period; authorizing a contractor to terminate  
75 a contract with a subcontractor under certain  
76 conditions; providing that a contract terminated  
77 according to such conditions is not a breach of  
78 contract by the contractor or subcontractor;  
79 authorizing a subcontractor to challenge a termination  
80 within a specified period after such termination by  
81 specified means; providing guidelines for  
82 interpretation of the provisions of the act; providing  
83 an effective date.

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

88

89 Section 1. E-verify Program required for private employers;  
90 business licensing enforcement; private right of action for  
91 displaced worker.-

92 (1) DEFINITIONS.-For purposes of this section, the term:

93 (a) "Agency" means any agency, department, board, or  
94 commission of this state or a county, municipality, or town  
95 issuing a license for purposes of operating a business in this  
96 state.

97 (b) "Employment Authorization Program" means the E-verify  
98 Program (formerly the "Basic Pilot Program") under Pub. L. No.  
99 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.  
100 30, 1996), as amended, or any successor program designated by the  
101 Federal Government for verification that an employee is not an  
102 unauthorized alien.

Proposed Florida Citizens Employment Protection Act

103 (c) "Employee" means any person who performs employment  
104 services in this state for an employer pursuant to an employment  
105 relationship between the person and employer.

106 (d) "Employer" means any individual or type of organization  
107 transacting business in this state which holds or has applied for  
108 a license issued by an agency in this state and employs  
109 individuals who perform employment services in this state. The  
110 term does not include an entity that hires an independent  
111 contractor to perform work or the occupant or owner of a private  
112 residence who hires casual domestic labor to perform work  
113 customarily performed by a homeowner entirely within a private  
114 residence.

115 (e) "License":

116 1. Means any agency license, permit, certificate, approval,  
117 registration, charter, or similar form of authorization required  
118 by law and issued by any agency for the purposes of operating a  
119 business in this state.

120 2. Includes:

121 a. Articles of Incorporation.

122 b. A certificate of partnership, a partnership registration,  
123 or articles of organization.

124 c. A grant of authority issued pursuant to state or federal  
125 law.

126 d. A transaction privilege tax license.

127  
128 The Department of Business and Professional Regulation shall, no  
129 later than July 1, 2010, adopt rules providing a procedure for an  
130 agency to exempt certain licenses issued by such agency which the  
131 agency determines, with the concurrence of the department, are  
132 unrelated to operating a business in this state.

133 (f) "Unauthorized alien" means an alien who is not  
134 authorized under federal law to be employed in the United States,  
135 as described in 8 U.S.C. 1324a(h) (3). This term shall be

Proposed Florida Citizens Employment Protection Act

136 interpreted consistently with that section and any federal rules  
137 or regulations applicable thereto.

138 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY.—Beginning  
139 January 1, 2010, every employer shall, after making an offer of  
140 employment which has been accepted by an employee, verify the  
141 employment eligibility of each employee using the Employment  
142 Authorization Program. Such verification shall occur within the  
143 period stipulated by federal law or regulations after the hiring  
144 of the employee. A continuing employee hired before the date of  
145 the employer's registration with the program is exempt from the  
146 requirements of this subsection.

147 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION; FALSE  
148 AND FRIVOLOUS COMPLAINTS; VIOLATION; CALSSIFICATION; SUSPENSION  
149 AND REVOCATION OF LICENSE.—

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

151 (b) Any person who has actual or constructive knowledge that  
152 an employer employs or has within the last 90 days employed an  
153 unauthorized alien, or that an unauthorized alien is employed by  
154 an employer, may file a complaint with the Department of Business  
155 and Professional Regulation or the Agency for Workforce  
156 Innovation.

157 (c) A person who knowingly files a false and frivolous  
158 complaint under this subsection commits a misdemeanor of the  
159 second degree, punishable as provided in s. 775.082 or s.  
160 775.083, Florida Statutes.

161 (d) Upon the receipt of a valid complaint of a violation of  
162 paragraph (a), the Department of Business and Professional  
163 Regulation or the Agency for Workforce Innovation shall notify  
164 the employer and direct the employer to notify any employees  
165 referred to in the complaint. The department or agency shall  
166 investigate whether a violation has occurred and hold an  
167 administrative hearing at which the employer may present any  
168 information he or she desires and at which the employer has the  
169 right to counsel. The department or agency shall also request the

Proposed Florida Citizens Employment Protection Act

170 Federal Government to verify, pursuant to 8 U.S.C. 1373(c), the  
171 employment authorization of any employee referred to in the  
172 complaint. The department or agency may not independently make a  
173 final determination regarding whether an alien is authorized to  
174 be employed in the United States. The department or agency shall  
175 rely upon verification of employment authorization provided by  
176 the Federal Government pursuant to 8 U.S.C. 1373(c).

177 (e) If, after confirmation that the employer has employed an  
178 unauthorized alien, the department or agency determines that the  
179 complaint is not frivolous, the department or agency shall  
180 notify:

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

184 2. The local law enforcement agency of the presence of the  
185 unauthorized alien in the jurisdiction.

186 (f) The department or agency may not act upon a complaint  
187 against any employer for any violation occurring before January  
188 1, 2010.

189 (g)1. Upon a finding of a first violation of paragraph (a)  
190 in a 2-year period, the department or agency shall order the  
191 employer to:

192 a. Terminate the employment of all unauthorized aliens; and

193 b. File a sworn affidavit with the department within 10 days  
194 after the order to terminate is issued. Such affidavit shall  
195 state that the employer has corrected the violation by:

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

197 (II) Requesting, after consultation with the employee, a  
198 secondary or additional verification of employment authorization  
199 using the Employment Authorization Program; or

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

# Proposed Florida Citizens Employment Protection Act

203       2. If the employer fails to file the affidavit as prescribed  
204 in sub-subparagraph 1.b., the department or agency shall order  
205 the appropriate agencies to suspend all applicable licenses held  
206 by the employer. All such licenses suspended shall remain  
207 suspended until the prescribed affidavit is filed.  
208 Notwithstanding any other provisions of law, upon the filing of  
209 the affidavit, the suspended licenses shall be deemed to have  
210 been reinstated for the purposes of this section. During the  
211 pendency of an action affirmed under sub-sub-subparagraph  
212 1.b.(II) or sub-sub-subparagraph 1.b.(III), the 10-day period  
213 shall be tolled. The 10-day period shall also be tolled during  
214 any period of contest in which the Federal Government may allow  
215 an alien to challenge the Federal Government's determination of  
216 his or her immigration status or employment authorization.

217       3. Licenses subject to suspension under this subsection  
218 include all licenses held by the employer and necessary to  
219 operate the employer's business at the location at which the  
220 unauthorized alien performed work. If a license is not necessary  
221 to operate the employer's business at the specific location at  
222 which the unauthorized alien performed work, but a license is  
223 necessary to operate the employer's business in general, the  
224 licenses subject to suspension under subparagraph 2. include all  
225 licenses held by the employer at the employer's primary place of  
226 business.

227       (h) For a second violation of paragraph (a) during a 2-year  
228 period, the department or agency shall order the appropriate  
229 agencies to suspend, for at least 30 days, all licenses held by  
230 the employer necessary to operate the employer's business at the  
231 location at which the unauthorized alien performed work. If a  
232 license is not necessary to operate the employer's business at  
233 the specific location at which the unauthorized alien performed  
234 work, but a license is necessary to operate the employer's  
235 business in general, the department or agency shall order the  
236 appropriate agencies to suspend all licenses held by the employer

Proposed Florida Citizens Employment Protection Act

237 at the employer's primary place of business. On receipt of the  
238 order and notwithstanding the provisions of any other law, the  
239 appropriate agencies shall immediately suspend such licenses for  
240 at least 30 days.

241 (i) The Agency for Workforce Innovation shall maintain a  
242 public database containing copies of all orders issued pursuant  
243 to this section and make such information available on the  
244 agency's website.

245 (j) If the Department of Business and Professional  
246 Regulation or the Agency for Workforce Innovation determines that  
247 an agency or employer has failed to comply with an order under  
248 this section, the department or agency may apply to the circuit  
249 court for a judicial order directing such agency or employer to  
250 comply with the department's or agency's order.

251 (k) For the purposes of this section, an employer who has  
252 used the Employment Authorization Program in compliance with  
253 subsection (2) has a rebuttable presumption that the employer did  
254 not knowingly employ an unauthorized alien in violation of  
255 paragraph (a).

256 (4) VENUE.—At any time after a complaint is received, an  
257 employer subject to a complaint under this section, or any  
258 employee of such employer who is alleged to be an unauthorized  
259 alien, may challenge and seek to enjoin the enforcement of this  
260 section with respect to such entity or individual before a court  
261 of competent jurisdiction.

262 (5) UNFAIR TRADE PRACTICE.—

263 (a) It is an unfair trade practice for an employer to  
264 discharge any United States citizen who is an employee in this  
265 state or any legal permanent resident alien employee in this  
266 state who has applied for naturalization, if, on the date of  
267 discharge, an unauthorized alien worker was employed by the  
268 employer at the same job site or in the same job classification  
269 elsewhere in the state, if such discharge is made knowingly or



Proposed Florida Citizens Employment Protection Act

270 with reckless disregard for the fact that such alien worker  
271 lacked federal employment authorization.

272 (b) Such discharged employee has a private cause of action  
273 against the employer for such an unfair trade practice.

274 (c) A cause of action under this subparagraph does not exist  
275 against an employer who, on the date of discharge, was enrolled  
276 and participating in the E-Verify Program described in paragraph  
277 (1)(b).

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

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

284 287.135 Verification of immigration status; public  
285 employers.—

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

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

296 (b) "Public employer" means any department, agency, or  
297 instrumentality of the state or any political subdivision of the  
298 state.

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

Proposed Florida Citizens Employment Protection Act

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

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

308 (b)1. A public employer may not enter into a contract for  
309 the physical performance of services within this state unless the  
310 contractor registers and participates in the E-Verify program.

311 2. A contractor or subcontractor may not enter into a  
312 contract or subcontract with a public employer in connection with  
313 the physical performance of services within this state unless the  
314 contractor or subcontractor registers and participates in the E-  
315 Verify program for the purpose of verifying information of all  
316 new employees employed within the state.

317 (3) (a) If a contractor uses a subcontractor, the  
318 subcontractor shall certify to the contractor in a manner that  
319 does not violate federal law that the subcontractor, at the time  
320 of certification, does not employ or contract with an  
321 unauthorized, unregistered, or illegal alien.

322 (b) A contractor shall maintain a copy of the certification  
323 of a subcontractor throughout the duration of the term of a  
324 contract with the subcontractor.

325 (4) (a) If a contractor determines that a subcontractor is in  
326 violation of this section, the contractor may terminate a  
327 contract with the subcontractor for the violation.

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

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

Proposed Florida Citizens Employment Protection Act

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

339       Section 3. This act shall take effect July 1, 2009.

340       Section 4. If any provision of this act or its application  
341 to any person or circumstance is held invalid, the invalidity  
342 does not affect the remaining provisions or applications of the  
343 act which can be given effect without the invalid provision or  
344 application, and to this end the provisions of this act are  
345 severable.

346       Section 5. This act shall take effect July 1, 2009.