

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

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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

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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:

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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.

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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.

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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

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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

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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.

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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

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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

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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.

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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.

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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.