

CHAPTER 2020-149

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 664

An act relating to the verification of employment eligibility; amending s. 288.061, F.S.; prohibiting the approval of certain economic development incentive applications after a specified date; requiring an awardee to repay certain moneys within a specified timeframe under certain circumstances; creating s. 448.095, F.S.; providing definitions; requiring public employers, contractors, and subcontractors to register with and use the E-Verify system; prohibiting such entities from entering into a contract unless each party to the contract registers with and uses the E-Verify system; requiring a subcontractor to provide a contractor with a certain affidavit; requiring a contractor to maintain a copy of such affidavit; authorizing the termination of a contract under certain conditions; providing that such termination is not a breach of contract; authorizing a challenge to such termination; providing certain liability for contractors if a contract is terminated; requiring private employers to verify the employment eligibility of newly hired employees beginning on a specified date; providing an exception; providing acceptable methods for verifying employment eligibility; requiring a private employer to maintain certain documentation for a specified time period; providing specified immunity and nonliability for private employers; creating a rebuttable presumption for private employers; requiring private employers to provide copies of certain documentation, upon request, to specified persons and entities for certain purposes; prohibiting specified persons and entities from making a determination as to whether a person is an unauthorized alien; requiring a specified affidavit from certain private employers; providing for the suspension or permanent revocation of certain licenses under certain circumstances; providing construction; providing an effective date.

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

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

288.061 Economic development incentive application process.—

(6) Beginning July 1, 2020, the executive director may not approve an economic development incentive application unless the application includes proof to the department that the applicant business is registered with and uses the E-Verify system, as defined in s. 448.095, to verify the work authorization status of all newly hired employees. If the department determines that an awardee is not complying with this subsection, the department must notify the awardee by certified mail of the department's determination of noncompliance and the awardee's right to appeal the

determination. Upon a final determination of noncompliance, the awardee must repay all moneys received as an economic development incentive to the department within 30 days after the final determination.

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

448.095 Employment eligibility.—

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

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

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

(c) “Department” means the Department of Economic Opportunity.

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

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

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

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

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

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

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

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

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

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

2. The contractor shall maintain a copy of such affidavit for the duration of the contract.

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

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

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

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

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

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

(3) PRIVATE EMPLOYERS.—

(a) Beginning January 1, 2021, a private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

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

1. Using the E-Verify system; or

2. Requiring the person to provide the same documentation that is required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9).

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

(c) A private employer that complies with this subsection may not be held civilly or criminally liable under state law for hiring, continuing to

employ, or refusing to hire an unauthorized alien if the information obtained under paragraph (b) indicates that the person's work authorization status was not that of an unauthorized alien.

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

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

Approved by the Governor June 30, 2020.

Filed in Office Secretary of State June 30, 2020.