

**Constitution Revision Commission
Executive Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 29

Relating to: MISCELLEANOUS

Introducer(s): Commissioner Newsome

Article/Section affected: Article X, creates new section

Date: January 15, 2018

	REFERENCE	ACTION
1.	<u>GP</u>	<u>Favorable</u>
2.	<u>EX</u>	<u>Pre-meeting</u>

I. SUMMARY:

This proposal creates a new section in Article X of the State Constitution that establishes requirements for all employers who hold, or have applied for, any type of license to operate a business in the State of Florida to verify the employment eligibility of new employees using the E-Verify system, beginning on July 1, 2020. The proposal provides automatic penalties for failing to verify the employment eligibility of new employees and for knowingly or intentionally employing an unauthorized alien. The proposal requires the Department of Business and Professional Regulation (DBPR) to enforce these provisions by adopting rules by July 8, 2019, developing and administering a statewide random auditing program to inspect employers for compliance, and receiving and investigating complaints from persons who have knowledge of an employer hiring unauthorized aliens. To assist employers with compliance, DBPR is required to establish a website that includes a public database disclosing employers who have violated these requirements and submit reports of all investigations that resulted in a penalty to the United States Immigration and Customs Enforcement.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Federal law requires all employers to verify the identity and employment eligibility of all persons hired to work in the United States by completing the Federal “Form I-9”, also referred to as the “Employment Eligibility Verification” form,¹ but there is currently no

¹ The Federal I-9 form requirement is a component of the Immigration Reform and Control Act of 1986 (IRCA). For more information see <https://www.uscis.gov/i-9-central/about-form-i-9/statutes-and-regulations> (last visited 11/22/17).

federal requirement that all employers use the E-Verify system to do so.² In Florida, although Governor's Executive Order 11-116³ does require all agencies under the direction of the Governor to verify the employment eligibility of all new employees by using the E-Verify system, there is currently no statutory requirement that all employers use the E-Verify system to determine employment eligibility.⁴

A 2012 report by the National Conference of State Legislatures (NCSL), identified twenty states that require some use of the E-Verify system for a least some public and/or private employers.⁵ Three of these states, Michigan, Pennsylvania, and West Virginia, mandate E-Verify for some employers.⁶

B. EFFECT OF PROPOSED CHANGES:

This proposal creates a new section in Article X of the State Constitution that establishes requirements for all employers who hold (or have applied for) any type of license to operate a business in the State of Florida to verify the employment eligibility of new employees using the employment authorization program (defined as the E-Verify system), beginning on July 1, 2020. Employers are defined as any individual or type of organization transacting business in this state and holds or has applied for a license issued by an agency. "License" is defined as an agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency or political subdivision of this state for the purpose of operating a business in this state. The definition excludes professional licenses, but includes employment licenses, articles of organization, articles of incorporation, a certificate of partnership or partnership registration, certificate to transact business, or similar forms of authorization.

The proposal provides specific automatic penalties for violations of its requirements. Employers that fail to verify the employment eligibility of new employees using the E-Verify system are subject to one year of probation for a first violation, and are required to submit quarterly reports demonstrating compliance during the probationary period. Subsequent violations within three years of the first violation result in the employer's license(s) being suspended for a period ranging between ten to thirty days.

For an initial violation of knowingly or intentionally employing unauthorized aliens, the proposal requires DBPR to suspend all licenses held by the employer, including licenses issued by other agencies, until the employer demonstrates compliance and pays a reinstatement fee that is equal to the cost of investigating and enforcing the matter (not to

² For more information on the E-Verify system see The E-Verify FAQ by NCSL (2012) <http://www.ncsl.org/documents/immig/E-VerifyFAQ2.pdf> (last visited 11/22/17).

³ See EO 11-116 http://www.flgov.com/wp-content/uploads/orders/2011/11-116-suspend_10-7.pdf (last visited 11/22/17). See also EO 11-02 http://www.flgov.com/wp-content/uploads/orders/2011/11-02-employment_9-26.pdf (last visited 11/22/17).

⁴ In 2011, the Florida Legislature considered several bills that required employment eligibility verification via the Federal E-Verify system. See CS/SB 2040 (2011): Enforcement of Immigration Laws. The bill passed the Senate, but died in messages in the Florida House of Representatives. <http://www.flsenate.gov/Session/Bill/2011/2040> (last visited 11/22/17).

⁵ See E-Verify Report by NCSL (2012) <http://www.ncsl.org/research/immigration/everify-faq.aspx> (last visited 11/22/17).

⁶ *Id.* For a more detailed report on state action regarding E-Verify see http://www.ncsl.org/documents/immig/StateActions_Everify.pdf (last visited 11/22/17).

exceed \$1000 for each investigation). For violations involving the employer hiring five or more unauthorized aliens, DBPR must suspend the employer's licenses for a period ranging between seven to thirty days. Subsequent violations within three years of the first suspension result in suspension of the employer's licenses for a period ranging from thirty to sixty days after compliance is demonstrated. For a third violation within six years of the first suspension and each subsequent violation, the employer's licenses are suspended for an additional 180 days after compliance.

The proposal allows persons who have knowledge of an employer hiring unauthorized aliens to file a complaint with DBPR. Employers who fail to verify the eligibility of a new employee within three business days are subject to penalties ranging from one year of probation to suspension of their license.

The proposal designates DBPR as the primary enforcing authority for this section. DBPR is required to put employers on probation and suspend all licenses of the employer, including those of other agencies, and collect reinstatement fees paid by the employers. Rules necessary for the implementation and enforcement of these requirements must be adopted by July 8, 2019. In addition to receiving and investigating complaints from individuals who have knowledge of employers hiring unauthorized aliens, DBPR is required to develop and administer a statewide random auditing program to inspect employers for compliance with this section.

To assist employers with compliance, the proposal requires DBPR to establish a website that includes a public database containing the names of employers who have violated this section and submit reports of all investigations that resulted in a penalty to the United States Immigration and Customs Enforcement. Additionally, the proposal requires that applications for all licenses, including those issued from other agencies, include notification of the requirements of this section.

It is important to note that the proposal requires DBPR to provide disciplinary enforcement for violations, regardless if DBPR is the agency with statutory jurisdiction over the employer.

C. FISCAL IMPACT:

According to DBPR, this proposal will increase workload and consequently have a fiscal impact on state government.⁷ Due to the scope of potential variables relating to all the different types of licenses statewide, the actual increase in new workload is unknown. Although indeterminate, the increase in workload, especially initially, is anticipated to be substantial.

⁷ Information provided by DBPR agency analysis of impact from Proposal 29 (on file with CRC staff).

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.