



Florida's Immigration Enforcement Legislation: Five Key Concerns March 2023

Key Update

The Florida state legislature [passed the Florida immigration enforcement bill](#) on May 2 and Gov. Ron DeSantis (R-Florida) [signed the bill into law](#) on May 10. The state legislature amended the final bill to help its passage. These points reflect changes to the original version of the bill:

- The enacted bill **narrows the bill's "transportation" provision** to only apply to undocumented individuals transported "into this state" as opposed to "into or within the state."
 - This change eliminates concerns that the bill would criminalize routine, day-to-day activities within the state, like driving an undocumented parishioner to church or an undocumented friend to a medical appointment.
 - By narrowing the language to "into this state," the unintended impact of this section on Florida residents is significantly reduced, though there are still concerns related to the "into this state" provision.
- Mandates that **businesses with more than 25 employees use e-verify** for new hires. The bill also increases certain penalties for hiring undocumented immigrants.
 - This is a change from the original version of the bill, which appeared to apply to all private businesses in Florida.
- The bill **does not repeal in-state tuition for Dreamers in Florida**. There were concerns this repeal would be added as an amendment to the bill.

Original Summary

Republican lawmakers in Florida introduced a legislative package on March 7, 2023 that would overhaul many of the state's laws related to immigrants and potentially increase immigration enforcement in the state. The proposal ([Senate Bill \(S.B.\) 1718](#)/[House Bill \(H.B.\) 1617](#)) includes most of the immigration priorities [highlighted](#) by Gov. Ron DeSantis (R-Florida) on February 23. The Florida state legislature is expected to consider and vote on the legislative package before its session concludes on May 5.

The proposal is likely to have a detrimental effect on Florida residents and institutions, including the state's faith community, health care industry, and businesses. The following five provisions are of particular concern and should be addressed by Florida legislators.

1. Makes it a third-degree felony to "transport" or "harbor" certain undocumented immigrants in the state.

The legislative proposal makes it a third-degree felony to transport into or within the state an individual who the person "knows, or reasonably should know" is undocumented and entered the U.S. without inspection. The bills would also make it illegal to conceal, harbor, or shield from

detection undocumented immigrants who entered without inspection. A person commits a separate offense for each individual they transport or harbor. In Florida, a [third-degree felony](#) is punishable by up to five years in prison. The provision, ostensibly intended to deal with human smuggling, does not apply to undocumented immigrants who overstayed their visa.

By imprecisely defining “harboring” and “transporting,” the proposal risks encompassing routine, day-to-day activities. This provision could significantly impact Florida residents and institutions who provide transportation and temporary housing services to undocumented immigrants in the state. For many churches and faith groups, service to others is an important practice compelled by their faith. Often, it can involve providing transportation services to parishioners, including undocumented individuals, so that they can attend a service or other important matters, including a doctor’s appointment. Churches and faith groups may now be liable for transporting individuals who they know or should reasonably be expected to know entered the U.S. without inspection. The provisions would also impact U.S. citizen family members and friends of undocumented immigrants, making them liable for everyday occurrences, such as driving the individual to work, a medical appointment, or grocery shopping.

The provision, as written, also threatens to impact school bus drivers, medical emergency personnel, and others who work in communities where they “reasonably should know” that some of the people they are transporting entered the U.S. without documentation. The broad and imprecise language of this provision threatens to criminalize routine services, potentially forcing service providers to deny services to individuals they suspect are immigrant residents. The provision is likely to have far-reaching impacts beyond the undocumented community.

The proposal appears to go beyond the “transport” and “harbor” [clauses under federal immigration law](#), potentially criminalizing routine conduct. Federal law establishes that an individual cannot transport an undocumented immigrant “in furtherance of such violation of [immigration] law.” The Florida proposal, which is broadly written, could be interpreted as criminalizing all transportation of certain undocumented immigrants “into or within” the state, regardless of whether it is in furtherance of violating immigration law. Federal law also defines “harbor” as a crime if it is “knowing or in reckless disregard of the fact” the person is undocumented. The proposal appears to go beyond the federal harboring definition, criminalizing conduct that “conceals, harbor, or shield from detection” an undocumented immigrant who the person “knows, or reasonably should know” is undocumented. The inclusion of “reasonably should know” in the proposal lowers the threshold that it would take to violate the law to include more routine interactions. Furthermore, the fact that these provisions extend beyond the definitions under federal law could mean that they are [likely preempted](#) and therefore unlawful.

2. Invalidates the use of driver licenses issued by other states to undocumented immigrants.

The proposal states that driver licenses “issued by another state exclusively to undocumented immigrants” would be invalid in Florida and would not authorize the holder to drive a vehicle in the state. Law enforcement officers who stop a person driving with an “invalid license” are required to provide a citation to the driver for driving without a license. The proposal also prevents Florida counties and localities from issuing an identification card or document to undocumented immigrants.

Nineteen states and D.C. [currently provide](#) undocumented immigrants with access to driver licenses. Florida is not one of those states. While the issuance of drivers’ licenses in other states generally does not obligate Florida to issue identification to undocumented people, the provision

not recognizing licenses issued by other states is likely to violate the U.S. Constitution's [Full Faith and Credit](#) clause, which directs states to recognize the laws, records, and judicial proceedings of every other state.

In addition, this provision also reduces road safety in Florida. By expanding access to driver licenses for undocumented residents, states help expand mobility and increase safety in the roads. This happens through road test exams, driver identification, and car insurance usage. The proposal would discourage a category of already-licensed and insured Florida visitors and short-term residents — those who are undocumented — from driving with a license in the state.

3. Requires hospitals to collect immigration status information for all patients.

The legislative package requires hospitals in Florida that accept Medicaid to add a question on their patient admissions and registration forms to indicate whether the patient is a U.S. citizen, lawfully present in the U.S., or undocumented. All patients will have to answer the question. Hospitals must submit a quarterly report to the state government with the number of hospital visits made by patients by immigration status (U.S. citizen; lawfully present; undocumented) and an annual report to the state legislature that includes the cost of uncompensated medical care provided to undocumented immigrants.

The provision raises significant privacy and data collection concerns. The legislation includes a clause prohibiting the reporting of the patient's immigration status to immigration authorities. However, there is no safeguard explicitly prohibiting hospitals from linking the patient's name to their immigration status for internal hospital purposes and collecting or distributing that information to officials who are not immigration authorities. The provision could create a chilling effect on immigrant communities by discouraging individuals from seeking medical care for fear that their immigration status might be collected and result in deportation.

4. Prevents DACA recipients and other immigrants from obtaining a license to practice law in Florida.

The proposed legislation repeals a 2014 Florida law that permits recipients of Deferred Action for Childhood Arrivals (DACA), as well as some Temporary Protected Status (TPS) holders and other individuals with valid work authorization, to obtain a license to practice law in the state. The provision would take effect on November 1, 2026. It would not impact law licenses issued before that date.

While serving as Florida's governor in 2014, Sen. Rick Scott (R-Florida) signed [House Bill \(H.B.\) 755](#), a bipartisan legislative effort, to permit DACA recipients and other undocumented individuals with valid work authorization and who meet certain requirements to be admitted to The Florida Bar. Florida is home to [40,000 undocumented students](#) enrolled in higher education. The proposal would limit the ability of DACA recipients and other students with work authorization to reach their full career potential by preventing them from practicing law in the state, including some already planning on pursuing a legal education.

5. Increases penalties for hiring undocumented immigrants.

The bills increase the financial penalties for employers who hire undocumented immigrants to \$1,000 (up from \$500) for the first offense and \$2,500 for subsequent offenses. Employers, including contractors who recruit and refer a person for employment, must verify the person's ability to work legally through E-Verify or employment authorization documents. The Chief of

Domestic Security in Florida would be responsible for conducting random audits of business. A business cannot be audited more than once every five years. The bill also establishes a new provision that an undocumented immigrant who works using false identification documents commits a third-degree felony.

In the state House bill ([\(H.B.\) 1617](#)), a person who has a good faith belief that an employer is employing an undocumented immigrant may file a complaint with the Florida Department of Economic Opportunity. If the department verifies that an employee is undocumented, it must notify U.S. Customs and Immigration Enforcement (ICE) and provide the name and physical address of the undocumented employee. This provision is likely to generate a climate of fear among businesses and immigrant workers. It might lead to false or bad faith complaints from people with animosity towards a particular business or employee. Any consumer with a good faith belief may file a complaint against a public or private employer, requiring the state and business to expend resources to investigate the claims.

Increasing penalties for businesses without a corresponding legislative solution from the U.S. Congress to reform our immigration system and ensure key sectors have an adequate pool of legal workers will have a negative economic impact. The U.S. Chamber of Commerce [notes](#) that Florida has 51 available workers for every 100 open jobs. Many key industries already face acute labor shortages, and this provision could have a particularly negative impact on those sectors that traditionally rely on migrant workers, including construction, agriculture, and hospitality. By worsening labor shortages that are already taking a toll on economic growth, some businesses are likely to cut back services or outsource additional work outside the United States.

In addition, the draconian nature of the new penalties on those convicted of using false identification to work will sow fear in immigrant and mixed-status families. By going beyond federal penalties for false identification as well as narrower anti-identity theft state laws recently [upheld by the U.S. Supreme Court](#), this provision raises serious preemption questions.

Additional Provisions

The legislative package includes additional provisions to amend Florida's immigration-related laws. The bills increase financial penalties for employers who continue to employ an undocumented immigrant even after obtaining knowledge that such person is or has become undocumented, all the way up to revoking the business' license. The package also requires law enforcement to collect DNA samples from individuals in law enforcement custody who are issued a federal immigration an immigration detainer.

The Senate bill also requires the Department of Law Enforcement and other state officials and agencies to cooperate and provide assistance to the federal government when dealing with immigration law enforcement incidents. The House bill, in a broader manner, directs law enforcement agencies to "use best efforts to support the enforcement of federal immigration law" and allows correctional facilities in the state to transfer individuals with an immigration detainer to federal custody, even outside of the state.

The proposal threatens to conflate local law enforcement with federal immigration authorities, which risks undermining the trust between immigrant communities and law enforcement officials. Immigrant communities may be discouraged from cooperating with law enforcement if they are the victims or witnesses of a crime for fear that their cooperation may result in immigration enforcement actions. The House bill's provision on detainers also opens state and local law enforcement agencies to [civil liability](#) in cases where it is later determined that the detention of an individual was not lawful.

Conclusion

The proposal ([Senate Bill \(S.B.\) 1718](#)/[House Bill \(H.B.\) 1617](#)) includes five key concerns that must be remedied to result in better legislation. We encourage the legislature of remove or significantly revise the following provisions:

1. Overly vague “transportation” and “harboring” provisions that will have a far-reaching impact on Florida communities. If not removed, these provisions should, at the very least, be narrowed to: 1) only impact individuals who are involved in human smuggling, 2) only focus on the transportation and harboring of migrants who have been in the U.S. for less than two weeks, which is usually the time most cases of trafficking would occur, 3) provide clear exceptions for faith groups, family members and friends, public service providers, and others, and 4) bring the “transporting” and “harboring” definitions more closely in line with federal definitions to focus on human smuggling cases;
2. Likely unconstitutional provision that prohibits the use of other states’ driver licenses in Florida;
3. Provision that requires Florida hospitals to collect immigration status information;
4. Provision that bars DACA recipients and others from obtaining a law license; and,
5. Provision creating a third-degree felony for undocumented immigrants using a false identification document to work, increasing financial penalties for businesses, and the provision in the House bill that allows people to submit a complaint that a business may be hiring an undocumented person, which would create onerous verification processes for businesses in Florida.

As currently written, the proposed immigration legislative package will have a negative impact on Florida residents and institutions, with dramatic economic and social consequences that will extend beyond the undocumented community in the state. Many elements of the legislative package are likely to be struck down in the courts and broad and often imprecise language in the bills threatens to criminalize normal, everyday interactions between undocumented residents and U.S. citizens or lawful permanent residents. Elements of the legislation pose concerns to faith groups, hospitals, businesses, and others.

Florida legislators should reconsider their support for the package and, at a minimum, consider making significant revisions to the package to better fit their stated objectives.