

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

D

HOUSE DRH10414-MD-101\* (5/9)

Short Title: Employers Must Use Federal E-Verify Program. (Public)

---

Sponsors: Representative Thomas.

---

Referred to:

---

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT EMPLOYERS IN THIS STATE USE THE FEDERAL  
2 E-VERIFY PROGRAM OR A SIMILAR VERIFICATION OF WORK  
3 AUTHORIZATION PROGRAM; AND TO APPROPRIATE FUNDS TO  
4 ESTABLISH AND SUPPORT A POSITION TO ASSIST IN THE  
5 IMPLEMENTATION AND EXECUTION OF THIS ACT.  
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a)** Article 5 of Chapter 153A of the General Statutes is  
9 amended by adding a new section to read:

10 **"§ 153A-99.1. County verification of employee work authorization.**

11 (a) Each county shall register and participate in the federal work authorization  
12 program to verify work authorization information of all new employees.

13 (b) As used in this section, the term 'federal work authorization program' means  
14 any of the electronic verification of work authorization programs operated by the United  
15 States Department of Homeland Security or any equivalent federal work authorization  
16 program operated by the United States Department of Homeland Security to verify  
17 information of newly hired employees, pursuant to the Immigration Reform and Control  
18 Act of 1986 (IRCA), Public Law 99-603.

19 (c) This section shall be enforced without regard to race, religion, gender,  
20 ethnicity, or national origin."

21 **SECTION 1.(b)** Article 7 of Chapter 160A of the General Statutes is  
22 amended by adding a new section to read:

23 **"§ 160A-169.1. City verification of employee work authorization.**

24 (a) Each city shall register and participate in the federal work authorization  
25 program to verify work authorization information of all new employees.

26 (b) As used in this section, the term 'federal work authorization program' means  
27 any of the electronic verification of work authorization programs operated by the United

1 States Department of Homeland Security or any equivalent federal work authorization  
2 program operated by the United States Department of Homeland Security to verify  
3 information of newly hired employees, pursuant to the Immigration Reform and Control  
4 Act of 1986 (IRCA), Public Law 99-603.

5 (c) This section shall be enforced without regard to race, religion, gender,  
6 ethnicity, or national origin."

7 **SECTION 1.(c)** Article 2 of Chapter 153A of the General Statutes is  
8 amended by adding a new section to read:

9 **"§ 153A-15.2. Contractors must use federal work authorization program.**

10 (a) No county may enter into a contract for the physical performance of services  
11 within this State unless the contractor registers and participates in the federal work  
12 authorization program to verify information of all new employees.

13 (b) As used in this section, the term 'federal work authorization program' means  
14 any of the electronic verification of work authorization programs operated by the United  
15 States Department of Homeland Security or any equivalent federal work authorization  
16 program operated by the United States Department of Homeland Security to verify  
17 information of newly hired employees, pursuant to the Immigration Reform and Control  
18 Act of 1986 (IRCA), Public Law 99-603."

19 **SECTION 1.(d)** Article 2 of Chapter 160A of the General Statutes is  
20 amended by adding a new section to read:

21 **"§ 160A-12.1. Contractors must use federal work authorization program.**

22 (a) No city may enter into a contract for the physical performance of services  
23 within this State unless the contractor registers and participates in the federal work  
24 authorization program to verify information of all new employees.

25 (b) As used in this section, the term 'federal work authorization program' means  
26 any of the electronic verification of work authorization programs operated by the United  
27 States Department of Homeland Security or any equivalent federal work authorization  
28 program operated by the United States Department of Homeland Security to verify  
29 information of newly hired employees, pursuant to the Immigration Reform and Control  
30 Act of 1986 (IRCA), Public Law 99-603."

31 **SECTION 1.(e)** G.S. 143-129 is amended by adding a new subsection to  
32 read:

33 "(i) No contract may be awarded by any board or governing body of the State,  
34 institution of the State government, or any political subdivision of the State, unless the  
35 contractor registers and participates in the federal work authorization program to verify  
36 information of all new employees. As used in this subsection, the term 'federal work  
37 authorization program' means any of the electronic verification of work authorization  
38 programs operated by the United States Department of Homeland Security or any  
39 equivalent federal work authorization program operated by the United States  
40 Department of Homeland Security to verify information of newly hired employees,  
41 pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public Law  
42 99-603."

43 **SECTION 2.(a)** Chapter 64 of the General Statutes is amended by adding a  
44 new Article to read:



- 1           (7) Intentionally. – With respect to a result or to particular conduct, acting  
2 with the objective of causing that result or engaging in that conduct.
- 3           (8) Knowingly employ an unauthorized alien. – The actions described in 8  
4 U.S.C. § 1324a. This term shall be interpreted consistently with any  
5 applicable federal rules and regulations.
- 6           (9) License. – Any agency permit, certificate, approval, registration,  
7 charter, or similar form of authorization that is required by law and  
8 that is issued by any agency for the purpose of operating a business in  
9 this State. This term does not include any professional license.
- 10          (10) Social Security Number verification service. – The program  
11 administered by the Social Security Administration to verify the Social  
12 Security Numbers of existing workers, or any of its successor program.
- 13          (11) Unauthorized alien. – An alien who does not have the legal right or  
14 authorization under federal law to work in the United States as  
15 described in 8 U.S.C. § 1324a(h)(3).

16 **"§ 64-11. Loss of business licenses for violations of federal immigration law.**

17       Any agency or commission that issues a license shall, upon a showing of clear and  
18 convincing evidence, summarily revoke any license issued to any entity that has  
19 violated any federal immigration law that relates to the employment of unauthorized  
20 aliens. If any agency makes a finding to revoke a license pursuant to this section, no  
21 other agency shall be required to make a similar finding in order to revoke a license  
22 issued by it.

23 **"§ 64-12. Knowingly employing unauthorized alien prohibited; penalties.**

24       (a) An employer shall not knowingly employ an unauthorized alien. If, in the  
25 case when an employer uses a contract, subcontract, or other independent contractor  
26 agreement to obtain the labor of an alien in this State, the employer knowingly contracts  
27 with an unauthorized alien or with a person who employs or contracts with an  
28 unauthorized alien to perform the labor, the employer violates this subsection.

29       (b) The Attorney General shall prescribe a complaint form for a person to allege  
30 a violation of subsection (a) of this section. The complainant shall not be required to list  
31 the complainant's Social Security Number on the complaint form or to have the  
32 complaint notarized. On receipt of a complaint on a prescribed complaint form that an  
33 employer allegedly knowingly employs an unauthorized alien, the Attorney General or  
34 county attorney shall investigate whether the employer has violated subsection (a) of  
35 this section. If a complaint is received but is not submitted on a prescribed complaint  
36 form, the Attorney General or county attorney may investigate whether the employer  
37 has violated subsection (a) of this section. This subsection shall not be construed to  
38 prohibit the filing of anonymous complaints that are not submitted on a prescribed  
39 complaint form. The Attorney General or County Attorney shall not investigate  
40 complaints that are based solely on race, color, or national origin. A complaint that is  
41 submitted to a county attorney shall be submitted to the county attorney in the county in  
42 which the alleged unauthorized alien is or was employed by the employer. The county  
43 sheriff or any other local law enforcement agency may assist in investigating the  
44 complaint. When investigating a complaint, the Attorney General or county attorney

1 shall verify the work authorization of the alleged unauthorized alien with the federal  
2 government pursuant to 8 U.S.C. § 1373(c). A State, county, or local official shall not  
3 attempt to independently make a final determination on whether an alien is authorized  
4 to work in the United States. An alien's immigration status or work authorization status  
5 shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). A person  
6 who knowingly files a false and frivolous complaint under this subsection is guilty of a  
7 Class 2 misdemeanor.

8 (c) If, after an investigation, the Attorney General or county attorney determines  
9 that the complaint is not false and frivolous:

10 (1) The Attorney General or county attorney shall notify the United States  
11 Customs and Immigration Enforcement of the unauthorized alien.

12 (2) The Attorney General or county attorney shall notify local law  
13 enforcement agencies of the unauthorized alien.

14 (3) The Attorney General shall notify the appropriate county attorney to  
15 bring an action pursuant to subsection (d) of this section if the  
16 complaint was originally filed with the Attorney General.

17 (d) An action for a violation of subsection (a) of this section shall be brought  
18 against the employer by the county attorney in the county where the unauthorized alien  
19 employee is or was employed by the employer. The county attorney shall not bring an  
20 action against any employer for any violation of subsection (a) that occurs before  
21 January 1, 2009. A second violation of this section shall be based only on an  
22 unauthorized alien who is employed by the employer after an action has been brought  
23 for a violation of subsection (a) of this section.

24 (e) For a finding of a violation of subsection (a) of this section:

25 (1) For a first violation as described in subdivision (3) of this subsection,  
26 the court:

27 a. Shall order the employer to terminate the employment of all  
28 unauthorized aliens.

29 b. Shall order the employer to be subject to a three-year  
30 probationary period for the business location where the  
31 unauthorized alien performed work. During the probationary  
32 period the employer shall file quarterly reports with the county  
33 attorney of each new employee who is hired by the employer at  
34 the business location where the unauthorized alien performed  
35 work.

36 c. Shall order the employer to file a signed sworn affidavit with  
37 the county attorney within three business days after the order is  
38 issued. The affidavit shall state the employer has terminated the  
39 employment of all unauthorized aliens in this State and that the  
40 employer will not intentionally or knowingly employ an  
41 unauthorized alien in this State. The court shall order the  
42 appropriate agencies to suspend all licenses subject to this  
43 subdivision that are held by the employer if the employer fails  
44 to file a signed, sworn affidavit with the county attorney within

1           three business days after the order is issued. All licenses that are  
2           suspended under this subdivision shall remain suspended until  
3           the employer files a signed, sworn affidavit with the county  
4           attorney. Notwithstanding any other provision of law, on filing  
5           of the affidavit, the suspended licenses shall be reinstated  
6           immediately by the appropriate agencies for the purposes of this  
7           subdivision. The licenses that are subject to suspension under  
8           this subdivision are all licenses that are held by the employer  
9           specific to the business location where the unauthorized alien  
10           performed work. If the employer does not hold a license  
11           specific to the business location where the unauthorized alien  
12           performed work, but a license is necessary to operate the  
13           employer's business in general, the licenses that are subject to  
14           suspension under this subdivision are all licenses that are held  
15           by the employer at the employer's primary place of business.  
16           On receipt of the court's order and notwithstanding any other  
17           provision of law, the appropriate agencies shall suspend the  
18           licenses according to the court's order. The court shall send a  
19           copy of the court's order to the Attorney General and the  
20           Attorney General shall maintain the copy pursuant to subsection  
21           (f) of this section.

22           d. May order the appropriate agencies to suspend all licenses  
23           described in sub-subdivision c. of this subdivision that are held  
24           by the employer for a period not to exceed 10 business days.  
25           The court shall base its decision to suspend under this  
26           sub-subdivision on any evidence or information submitted to it  
27           during the action for violation of this section and shall consider  
28           the following factors, if relevant:

- 29           1. The number of unauthorized aliens employed by the  
30           employer.
- 31           2. Any prior misconduct by the employer.
- 32           3. The degree of harm resulting from the violation.
- 33           4. Whether the employer made good faith efforts to comply  
34           with any applicable requirements.
- 35           5. The duration of the violation.
- 36           6. The role of the directors, officers, or principals of the  
37           employer in the violation.
- 38           7. Any other factors the court deems appropriate.

39           (2) For a second violation as described in subdivision (3) of this  
40           subsection, the court shall order the appropriate agencies to  
41           permanently revoke all licenses that are held by the employer specific  
42           to the business location where the unauthorized alien performed work.  
43           If the employer does not hold a license specific to the business location  
44           where the unauthorized alien performed work, but a license is

1           necessary to operate the employer's business in general, the court shall  
2           order the appropriate agencies to permanently revoke all licenses that  
3           are held by the employer at the employer's primary place of business.  
4           On receipt of the order and notwithstanding any other provision of  
5           law, the appropriate agencies shall immediately revoke the licenses.

6           (3) The violation shall be considered:

7           a. A first violation by an employer at a business location if the  
8           violation did not occur during a probationary period ordered by  
9           the court under this subsection.

10          b. A second violation by an employer at a business location if the  
11          violation occurred during a probationary period ordered by the  
12          court under this subsection.

13          (f) The Attorney General shall maintain copies of court orders that are received  
14          pursuant to subsection (e) of this section and shall maintain a database of the employers  
15          and business locations that have a first violation of subsection (a) of this section and  
16          make the court orders available on the Attorney General's Web site.

17          (g) On determining whether an employee is an unauthorized alien, the court shall  
18          consider only the federal government's determination pursuant to 8 U.S.C. § 1373(c).  
19          The federal government's determination creates a rebuttable presumption concerning the  
20          employee's legal status. The court may take judicial notice of the federal government's  
21          determination and may request the federal government to provide automated or  
22          testimonial verification pursuant to 8 U.S.C. § 1373(c).

23          (h) For the purposes of this section, proof of verifying the employment  
24          authorization of an employee through the federal work authorization program creates a  
25          rebuttable presumption that an employer did not knowingly employ an unauthorized  
26          alien.

27          (i) For the purposes of this section, an employer who establishes that it has  
28          complied in good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an  
29          affirmative defense that the employer did not knowingly employ an unauthorized alien.  
30          For purposes of this subsection, an employer is considered to have complied with the  
31          requirements of 8 U.S.C. § 1324a(b) notwithstanding any isolated, sporadic, or  
32          accidental technical or procedural failure to meet the requirements, so long as there is a  
33          good faith attempt to comply with the requirements.

34          **"§ 64-13. Article does not require action that is contrary to federal or State law.**

35          This Article shall not be construed to require an employer to take any action that the  
36          employer believes in good faith would violate federal or State law.

37          **"§ 64-14. Employers must use federal work authorization program.**

38          After December 31, 2008, every employer, after hiring an employee, shall verify the  
39          employment eligibility of the employee through the federal work authorization program.  
40          Alternatively, verification may be made through a third party on behalf of an employer  
41          where permitted by federal law.

42          **"§ 64-15. Discharge of authorized employee while employer simultaneously**  
43          **employs an unauthorized alien is an unfair trade practice.**

1        The discharge of any United States citizen or permanent resident alien employee by  
2 an employer of this State, who, on the date of the discharge, employed an unauthorized  
3 alien, shall be an unfair trade practice as defined in G.S. 75-1.1, and the discharged  
4 employee shall have a right of action under G.S. 75-16."

5            **SECTION 3.** There is appropriated from the General Fund to the Office of  
6 the Attorney General of the Department of Justice the sum of eighty-three thousand  
7 dollars (\$83,000) in recurring funds for the 2008-2009 fiscal year to establish and  
8 support a full-time attorney to assist in the implementation and execution of this act.  
9 Specifically, the attorney shall be responsible for acting as a liaison with the United  
10 States Department of Homeland Security and other agencies regarding the work  
11 authorization program, advising the Attorney General regarding this act, assisting  
12 employers to comply with this act, and assisting the Attorney General with enforcing  
13 this act.

14            **SECTION 4.** This act becomes effective January 1, 2009.