

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 344*

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

Sponsors: Representatives Neumann, Cleveland (Primary Sponsors); Blackwood, Current, Gulley, and Johnson.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I, if favorable, Appropriations.

March 2, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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



1 **"§ 153A-15.2. Contractors must use federal work authorization program.**

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

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

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

13 **"§ 160A-12.1. Contractors must use federal work authorization program.**

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

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

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

24 (i) No contract subject to this section may be awarded by any board or governing body
25 of the State, institution of the State government, or any political subdivision of the State, unless
26 the contractor registers and participates in the federal work authorization program to verify
27 information of all new employees. As used in this subsection, the term 'federal work
28 authorization program' means any of the electronic verification of work authorization programs
29 operated by the United States Department of Homeland Security or any equivalent federal work
30 authorization program operated by the United States Department of Homeland Security to
31 verify information of newly hired employees, pursuant to the Immigration Reform and Control
32 Act of 1986 (IRCA), Public Law 99-603."

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

35 "Article 1.

36 "Various Provisions Relating to Aliens."

37 **SECTION 2.(b)** G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of
38 Chapter 64 of the General Statutes, as created by this section.

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

41 "Article 2.

42 "Employment of Unauthorized Aliens.

43 **"§ 64-10. Definitions.**

44 The following definitions apply in this Article:

- 45 (1) Agency. – Any agency, department, board, or commission of this State, a
46 county, or city that issues a license for purposes of operating a business in
47 this State.
48 (2) Employ. – Hiring an employee after January 1, 2010.
49 (3) Employee. – Any person who provides services or labor for an employer in
50 this State for wages or other remuneration. This term does not include an
51 independent contractor.

- 1 (4) Employer. – Any individual or type of organization that transacts business in
2 this State, that has a license issued by an agency in this State, and that
3 employs one or more employees in this State. In the case of an independent
4 contractor, the term means the independent contractor and does not mean the
5 person or organization that uses the contract labor.
- 6 (5) Federal work authorization program. – Any of the electronic verification of
7 work authorization programs operated by the United States Department of
8 Homeland Security or any equivalent federal work authorization program
9 operated by the United States Department of Homeland Security to verify
10 information of newly hired employees, pursuant to the Immigration Reform
11 and Control Act of 1986 (IRCA), Public Law 99-603.
- 12 (6) Independent contractor. – Any individual or entity that carries on an
13 independent business, that contracts to do a piece of work according to the
14 individual's or entity's own means and methods and that is subject to control
15 only as to results. Whether an individual or entity is an independent
16 contractor is to be determined on a case-by-case basis through various
17 factors including whether the individual or entity:
- 18 a. Supplies the tools or materials.
19 b. Makes services available to the general public.
20 c. Works or may work for a number of clients at the same time.
21 d. Has an opportunity for profit or loss as a result of labor or service
22 provided.
23 e. Invests in the facilities for work.
24 f. Directs the order or sequence in which the work is completed.
25 g. Determines the hours when the work is completed.
- 26 (7) Intentionally. – With respect to a result or to particular conduct, acting with
27 the objective of causing that result or engaging in that conduct.
- 28 (8) Knowingly employ an unauthorized alien. – The actions described in 8
29 U.S.C. § 1324a. This term shall be interpreted consistently with any
30 applicable federal rules and regulations.
- 31 (9) License. – Any agency permit, certificate, approval, registration, charter, or
32 similar form of authorization that is required by law and that is issued by any
33 agency for the purpose of operating a business in this State. This term does
34 not include any professional license.
- 35 (10) Social security number verification service. – The program administered by
36 the Social Security Administration to verify the social security numbers of
37 existing workers, or any of its successor program.
- 38 (11) Unauthorized alien. – An alien who does not have the legal right or
39 authorization under federal law to work in the United States as described in
40 8 U.S.C. § 1324a(h)(3).

41 **"§ 64-11. Loss of business licenses for violations of federal immigration law.**

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

47 **"§ 64-12. Knowingly employing unauthorized alien prohibited; penalties.**

48 (a) An employer shall not knowingly employ an unauthorized alien. If, in the case when
49 an employer uses a contract, subcontract, or other independent contractor agreement to obtain
50 the labor of an alien in this State, the employer knowingly contracts with an unauthorized alien

1 or with a person who employs or contracts with an unauthorized alien to perform the labor, the
2 employer violates this subsection.

3 (b) The Attorney General shall prescribe a complaint form for a person to allege a
4 violation of subsection (a) of this section. The complainant shall not be required to list the
5 complainant's social security number on the complaint form or to have the complaint notarized.
6 On receipt of a complaint on a prescribed complaint form that an employer allegedly
7 knowingly employs an unauthorized alien, the Attorney General or county attorney shall
8 investigate whether the employer has violated subsection (a) of this section. If a complaint is
9 received but is not submitted on a prescribed complaint form, the Attorney General or county
10 attorney may investigate whether the employer has violated subsection (a) of this section. This
11 subsection shall not be construed to prohibit the filing of anonymous complaints that are not
12 submitted on a prescribed complaint form. The Attorney General or county attorney shall not
13 investigate complaints that are based solely on race, color, or national origin. A complaint that
14 is submitted to a county attorney shall be submitted to the county attorney in the county in
15 which the alleged unauthorized alien is or was employed by the employer. The county sheriff
16 or any other local law enforcement agency may assist in investigating the complaint. When
17 investigating a complaint, the Attorney General or county attorney shall verify the work
18 authorization of the alleged unauthorized alien with the federal government pursuant to 8
19 U.S.C. § 1373(c). A State, county, or local official shall not attempt to independently make a
20 final determination on whether an alien is authorized to work in the United States. An alien's
21 immigration status or work authorization status shall be verified with the federal government
22 pursuant to 8 U.S.C. § 1373(c). A person who knowingly files a false and frivolous complaint
23 under this subsection is guilty of a Class 2 misdemeanor.

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

- 26 (1) The Attorney General or county attorney shall notify the United States
27 Customs and Immigration Enforcement of the unauthorized alien.
- 28 (2) The Attorney General or county attorney shall notify local law enforcement
29 agencies of the unauthorized alien.
- 30 (3) The Attorney General shall notify the appropriate county attorney to bring
31 an action pursuant to subsection (d) of this section if the complaint was
32 originally filed with the Attorney General.

33 (d) An action for a violation of subsection (a) of this section shall be brought against the
34 employer by the county attorney in the county where the unauthorized alien employee is or was
35 employed by the employer. The county attorney shall not bring an action against any employer
36 for any violation of subsection (a) that occurs before January 1, 2010. A second violation of
37 this section shall be based only on an unauthorized alien who is employed by the employer
38 after an action has been brought for a violation of subsection (a) of this section.

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

- 40 (1) For a first violation as described in subdivision (3) of this subsection, the
41 court:
 - 42 a. Shall order the employer to terminate the employment of all
43 unauthorized aliens.
 - 44 b. Shall order the employer to be subject to a three-year probationary
45 period for the business location where the unauthorized alien
46 performed work. During the probationary period the employer shall
47 file quarterly reports with the county attorney of each new employee
48 who is hired by the employer at the business location where the
49 unauthorized alien performed work.
 - 50 c. Shall order the employer to file a signed sworn affidavit with the
51 county attorney within three business days after the order is issued.

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

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

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

42 (2) For a second violation as described in subdivision (3) of this subsection, the
43 court shall order the appropriate agencies to permanently revoke all licenses
44 that are held by the employer specific to the business location where the
45 unauthorized alien performed work. If the employer does not hold a license
46 specific to the business location where the unauthorized alien performed
47 work, but a license is necessary to operate the employer's business in
48 general, the court shall order the appropriate agencies to permanently revoke
49 all licenses that are held by the employer at the employer's primary place of
50 business. On receipt of the order and notwithstanding any other provision of
51 law, the appropriate agencies shall immediately revoke the licenses.

1 (3) The violation shall be considered:

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

5 b. A second violation by an employer at a business location if the
6 violation occurred during a probationary period ordered by the court
7 under this subsection.

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

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

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

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

27 **"§ 64-13. Article does not require action that is contrary to federal or State law.**

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

30 **"§ 64-14. Employers must use federal work authorization program.**

31 After December 31, 2009, every employer, after hiring an employee, shall verify the
32 employment eligibility of the employee through the federal work authorization program.
33 Alternatively, verification may be made through a third party on behalf of an employer where
34 permitted by federal law.

35 **"§ 64-15. Discharge of authorized employee while employer simultaneously employs an**
36 **unauthorized alien is an unfair trade practice.**

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

41 **SECTION 3.** There is appropriated from the General Fund to the Office of the
42 Attorney General of the Department of Justice the sum of eighty-three thousand dollars
43 (\$83,000) for the 2009-2010 fiscal year and the sum of eighty-three thousand dollars (\$83,000)
44 for the 2010-2011 fiscal year to establish and support a full-time attorney to assist in the
45 implementation and execution of this act. Specifically, the attorney shall be responsible for
46 acting as a liaison with the United States Department of Homeland Security and other agencies
47 regarding the federal work authorization program, advising the Attorney General regarding this
48 act, assisting employers to comply with this act, and assisting the Attorney General with
49 enforcing this act.

50 **SECTION 4.** Section 3 of this act becomes effective on July 1, 2009. The
51 remainder of this act becomes effective January 1, 2010.