

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 32

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

Sponsors: Senators Snow; Allran, Apodaca, Atwater, Berger of Franklin, Blake, Boseman, Davis, Goss, Hoyle, Jacumin, McKissick, Nesbitt, Queen, Rand, Swindell, Tillman, and Vaughan.

Referred to: Commerce.

February 4, 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.