

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 2002*

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

Sponsors: Senators Snow; Apodaca, Berger of Franklin, Bingham, Brock, Dalton, Hagan, Hoyle, Queen, and Tillman.

Referred to: Appropriations/Base Budget.

May 28, 2008

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

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

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

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

8 **"§ 153A-15.2. Contractors must use federal work authorization program.**

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

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

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

20 **"§ 160A-12.1. Contractors must use federal work authorization program.**

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

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

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

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

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

44 "Article 1.

1 "Various Provisions Relating to Aliens."

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

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

6 "Article 2.

7 "Employment of Unauthorized Aliens.

8 "§ 64-10. Definitions.

9 The following definitions apply in this Article:

- 10 (1) Agency. – Any agency, department, board, or commission of this
11 State, a county, or city that issues a license for purposes of operating a
12 business in this State.
- 13 (2) Employ. – Hiring an employee after January 1, 2009.
- 14 (3) Employee. – Any person who provides services or labor for an
15 employer in this State for wages or other remuneration. This term does
16 not include an independent contractor.
- 17 (4) Employer. – Any individual or type of organization that transacts
18 business in this State, that has a license issued by an agency in this
19 State, and that employs one or more employees in this State. In the
20 case of an independent contractor, the term means the independent
21 contractor and does not mean the person or organization that uses the
22 contract labor.
- 23 (5) Federal work authorization program. – Any of the electronic
24 verification of work authorization programs operated by the United
25 States Department of Homeland Security or any equivalent federal
26 work authorization program operated by the United States Department
27 of Homeland Security to verify information of newly hired employees,
28 pursuant to the Immigration Reform and Control Act of 1986 (IRCA),
29 Public Law 99-603.
- 30 (6) Independent contractor. – Any individual or entity that carries on an
31 independent business, that contracts to do a piece of work according to
32 the individual's or entity's own means and methods and that is subject
33 to control only as to results. Whether an individual or entity is an
34 independent contractor is to be determined on a case-by-case basis
35 through various factors including whether the individual or entity:
- 36 a. Supplies the tools or materials.
- 37 b. Makes services available to the general public.
- 38 c. Works or may work for a number of clients at the same time.
- 39 d. Has an opportunity for profit or loss as a result of labor or
40 service provided.
- 41 e. Invests in the facilities for work.
- 42 f. Directs the order or sequence in which the work is completed.
- 43 g. Determines the hours when the work is completed.

- 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.