

February 26, 2009

H 344. EMPLOYERS MUST USE FEDERAL E-VERIFY PROGRAM. Filed 2/26/09. *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.*

Work authorization verification. Enacts new GS 153A-99.1 to require counties to register and participate in the *federal work authorization program* to verify work authorization information on all new employees. Also enacts GS 160A-169.1 to require cities to register and participate in the *federal work authorization program* to verify work authorization information on all new employees. Defines the term *federal work authorization program* to mean any of the electronic verification of work authorization programs or any equivalent operated by the US Department of Homeland Security under the Immigration and Reform and Control Act of 1986. Provides that the proposed new sections are to be enforced without regard to race, religion, gender, ethnicity, or national origin.

Enacts new GS 153A-15.2 and GS 160A-12.1 to prohibit counties and cities, respectively, from entering into contracts for the physical performance of service within the state unless the contractor registers and participates in the federal work authorization program to verify all new employee information. Enacts new GS 143-129(i) to prohibit contracts from being awarded by any board, state governing body, institution of state government, or political subdivision, unless the contractor registers and participates in the federal work authorization program to verify information for all new employees.

Employment of unauthorized aliens. Amends GS Chapter 64 to add new Article I and Article II. Recodifies GS 64-1 through GS 64-5 as Article 1 of GS Chapter 64, with the title *Various Provisions Relating to Aliens*.

Further amends GS Chapter 64 by enacting Article 2, *Employment of Unauthorized Aliens* (regarding private employers), GS 64-10 through GS 64-15.

Provides definitions for the following terms as used in proposed Article 2: (1) specifies that *knowingly employ an unauthorized alien* refers to the actions described in 8 U.S.C. Section 1324a(a)(1)(A), (2) *unauthorized alien* refers to an alien who does not have the legal right or authorization to work in the United States as described in 8 U.S.C. Section 1324a(h)(3), and (3) *intentionally* means acting with the objective of causing a particular result or engaging in that conduct. Also includes additional definitions for (1) agency, (2) employee, (3) independent contractor, (4) employer, (5) license, and (6) Social Security number verification service. Defines *federal work authorization program* with the same meaning previously specified.

Requires an agency or commission that issues licenses to revoke the license issued to any entity that has, upon a showing of clear and convincing evidence, violated any federal immigration law related to the employment of unauthorized aliens. Prohibits an employer from knowingly employing unauthorized aliens. Directs the state Attorney General (AG) to prescribe a complaint form for reporting the violation of employing an unauthorized alien. Provides that upon the receipt of a complaint form alleging a violation, the AG or the county attorney is to investigate the alleged violation. Provides guidelines for conducting the investigation of the allegations. Directs that if after an investigation, the AG or county attorney determines that the complaint is not false or frivolous then the AG or county attorney is to notify: (1) the United States Customs and Immigration Enforcement of the presence of the unauthorized alien; and (2) local law enforcement agencies of the presence of the unauthorized alien. Directs the AG to notify the appropriate county attorney if the complaint was originally filed with the AG. Makes it a Class 2 misdemeanor to knowingly file a false and frivolous complaint.

Directs the county attorney in the county where the violation of federal immigration law occurred to bring an action against the offending employer; however, restricts the county attorney from bringing an action against an employer for a violation of federal immigration law that occurred before January 1, 2010. Provides for penalties for first and second violations by an employer who knowingly employs an unauthorized alien that include suspension of licenses, the permanent revocation of licenses, and the imposition of probationary periods.

Directs the AG to maintain copies of court orders issued regarding a violation of proposed GS 62-22(e), to maintain a database of employers convicted of a first violation, and to make the court orders available on the AG's website.

Provides instruction to the court on determining whether an employee is an unauthorized alien. Provides that an employer providing proof of verifying the employment authorization of an employee using the federal work authorization program creates a rebuttable presumption that the employer did not knowingly employ an unauthorized alien. Also provides that an employer who demonstrates that the employer has complied in good faith with the requirements of 8 U.S.C. Section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. Provides additional guidelines regarding complying with federal and state law.

Directs that, after December 31, 2009, employers must use the federal work authorization program to verify the employment eligibility of an employee.

Makes it an unfair trade practice, as defined in GS 75-1.1, for an employer to discharge a lawfully authorized employee while knowingly employing an unauthorized alien. Provides that the discharged employee has a right of action under GS 75-16.

Appropriation. Appropriates \$83,000 for 2009-10 and \$83,000 for 2010-11 from the General Fund to the Department of Justice, Office of the Attorney General, to establish and support a full-time attorney position to assist in the implementation of this act. Requires the attorney to be responsible for acting as a liaison with the US Department of Homeland Security and other agencies regarding the federal work authorization program, advising the Attorney General regarding this act, assisting employers in complying with the act, and assisting the Attorney General with enforcement. Effective July 1, 2009.

Unless otherwise indicated, effective January 1, 2010.

Intro. by Neumann.

GS 64, 153A, 160A, APPROP