

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 36
Committee Substitute Favorable 5/19/11
Committee Substitute #2 Favorable 6/3/11
Fourth Edition Engrossed 6/8/11
Senate Commerce Committee Substitute Adopted 6/14/11
Sixth Edition Engrossed 6/14/11
Proposed Conference Committee Substitute H36-PCCS50411-MD-1

Short Title: Employers & Local Gov't Must Use E-Verify. (Public)

Sponsors:

Referred to:

February 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE COUNTIES, CITIES, AND EMPLOYERS TO USE THE FEDERAL
3 E-VERIFY PROGRAM TO VERIFY THE WORK AUTHORIZATION OF NEWLY
4 HIRED EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 64 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 1.

9 Various Provisions Related to Aliens."

10 **SECTION 2.** G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of Chapter 64
11 of the General Statutes, as created by Section 1 of this act.

12 **SECTION 3.** Chapter 64 of the General Statutes is amended by adding a new
13 Article to read:

14 "Article 2.

15 "Verification of Work Authorization.

16 **"§ 64-25. Definitions.**

17 The following definitions apply in this Article:

- 18 (1) Commissioner. – The North Carolina Commissioner of Labor.
19 (2) Employ. – Hire an employee.
20 (3) Employee. – Any individual who provides services or labor for an employer
21 in this State for wages or other remuneration.
22 (4) Employer. – Any person, business entity, or other organization that transacts
23 business in this State and that employs 25 or more employees in this State.
24 This term does not include State agencies, counties, municipalities, or other
25 governmental bodies.
26 (5) E-Verify. – The federal E-Verify program operated by the United States
27 Department of Homeland Security and other federal agencies, or any
28 successor or equivalent program used to verify the work authorization of
29 newly hired employees pursuant to federal law.



* H 3 6 - P C C S 5 0 4 1 1 - C S M D - 1 *

(6) Unauthorized alien. – As defined in 8 U.S.C. § 1324a(h)(3).

"§ 64-26. Verification of employee work authorization.

(a) Employers Must Use E-Verify. – Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify.

(b) Employer Preservation of E-Verify Forms. – Each employer shall retain the record of the verification of work authorization required by this section while the employee is employed and for one year thereafter.

(c) Exemption. – Subsection (a) of this section shall not apply with respect to a seasonal temporary employee who is employed for 90 or fewer days during a 12-consecutive-month period.

"§ 64-27. Commissioner of Labor to prepare complaint form.

(a) Preparation of Form. – The Commissioner shall prescribe a complaint form for a person to allege a violation of G.S. 64-26. The form shall clearly state that completed forms may be sent to the Commissioner.

(b) Certain Information Not Required. – The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint notarized.

"§ 64-28. Reporting of complaints.

(a) Filing of Complaint. – Any person with a good faith belief that an employer is violating or has violated G.S. 64-26 may file a complaint with the Commissioner setting forth the basis for that belief. The complaint may be on a form prescribed by the Commissioner pursuant to G.S. 64-27 or may be made in any other form that gives the Commissioner information that is sufficient to proceed with an investigation pursuant to G.S. 64-29. Nothing in this section shall be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form.

(b) False Statements a Misdemeanor. – A person who knowingly files a false and frivolous complaint under this section is guilty of a Class 2 misdemeanor.

"§ 64-29. Investigation of complaints.

(a) Investigation. – Upon receipt of a complaint pursuant to G.S. 64-28 that an employer is allegedly violating or has allegedly violated G.S. 64-26, the Commissioner shall investigate whether the employer has in fact violated G.S. 64-26.

(b) Certain Complaints Shall Not Be Investigated. – The Commissioner shall not investigate complaints that are based solely on race, religion, gender, ethnicity, or national origin.

(c) Assistance by Law Enforcement. – The Commissioner may request that the State Bureau of Investigation assist in investigating a complaint under this section.

(d) Subpoena for Production of Documents. – The Commissioner may issue a subpoena for production of employment records that relate to the recruitment, hiring, employment, or termination policies, practices, or acts of employment as part of the investigation of a valid complaint under this section.

"§ 64-30. Actions to be taken; hearing.

If, after an investigation, the Commissioner determines that the complaint is not false and frivolous:

(1) The Commissioner shall hold a hearing to determine if a violation of G.S. 64-26 has occurred and, if appropriate, impose civil penalties in accordance with the provisions of this Article.

(2) If, during the course of the hearing required by subdivision (1) of this section, the Commissioner concludes that there is a reasonable likelihood that an employee is an unauthorized alien, the Commissioner shall notify the following entities of the possible presence of an unauthorized alien:

a. United States Immigration and Customs Enforcement.

b. Local law enforcement agencies.

"§ 64-31. Consequences of first violation.

(a) Affidavit Must Be Filed. – For a first violation of G.S. 64-26, the Commissioner shall order the employer to file a signed sworn affidavit with the Commissioner within three business days after the order issued pursuant to this subsection is issued. The affidavit shall state with specificity that the employer has, after consultation with the employee, requested a verification of work authorization through E-Verify.

(b) Effect of Failure to File Affidavit. – If an employer fails to timely file an affidavit required by subsection (a) of this section or by G.S. 64-32 or G.S. 64-33, the Commissioner shall order the employer to pay a civil penalty of ten thousand dollars (\$10,000).

"§ 64-32. Consequences of second violation.

For a violation of G.S. 64-26 that occurs after an order has been issued pursuant to G.S. 64-31, the Commissioner shall order the measures required by G.S. 64-31(a) and shall also order the employer to pay a civil penalty of one thousand dollars (\$1,000), regardless of the number of required employee verifications the employer failed to make.

"§ 64-33. Consequences of third or subsequent violation.

For a violation of G.S. 64-26 that occurs after an order has been issued pursuant to G.S. 64-32, the Commissioner shall order the measures required by G.S. 64-31(a), and shall also order the employer to pay a civil penalty of two thousand dollars (\$2,000) for each required employee verification the employer failed to make.

"§ 64-34. Commissioner to maintain copies of orders.

The Commissioner shall maintain copies of orders issued pursuant to G.S. 64-31, 64-32, and 64-33, and shall maintain a database of the employers and business locations that have a violation of G.S. 64-26 and make the orders available on the Commissioner's Web site.

"§ 64-35. Work authorization shall be verified through the federal government.

When investigating a complaint under this Article, the Commissioner shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C. § 1373(c). The Commissioner shall not attempt to independently make a final determination of whether an alien is authorized to work in the United States.

"§ 64-36. Appeal of Commissioner's order.

A determination by the Commissioner pursuant to this Article shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the employer charged with the violation takes exception to the determination, in which event final determination shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B of the General Statutes and in a judicial proceeding pursuant to Article 4 of Chapter 150B of the General Statutes.

"§ 64-37. Rules.

The Commissioner may adopt rules needed to implement this Article.

"§ 64-38. Article does not require action that is contrary to federal or State law.

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

SECTION 4. 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) Counties Must Use E-Verify. – Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.

(b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal E-Verify program operated by the United States Department of Homeland Security and other

1 federal agencies, or any successor or equivalent program used to verify the work authorization
2 of newly hired employees pursuant to federal law.

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

5 **SECTION 5.** Article 7 of Chapter 160A of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 160A-169.1. Municipality verification of employee work authorization.**

8 (a) Municipalities Must Use E-Verify. – Each municipality shall register and participate
9 in E-Verify to verify the work authorization of new employees hired to work in the United
10 States.

11 (b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal
12 E-Verify program operated by the United States Department of Homeland Security and other
13 federal agencies, or any successor or equivalent program used to verify the work authorization
14 of newly hired employees pursuant to federal law.

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

17 **SECTION 6.** Sections 4, 5, and 6 of this act become effective October 1, 2011.
18 The remainder of this act becomes effective in accordance with the following schedule:

- 19 (1) October 1, 2012, for employers that employ 500 or more employees.
- 20 (2) January 1, 2013, for employers that employ 100 or more but less than 500
21 employees.
- 22 (3) July 1, 2013, for employers that employ 25 or more but less than 100
23 employees.