

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 36
Committee Substitute Favorable 5/19/11
PROPOSED COMMITTEE SUBSTITUTE H36-PCS11221-RU-5

Short Title: Employers/Gov. Contractors Must Use E-Verify.

(Public)

Sponsors:

Referred to:

February 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE EMPLOYERS IN THIS STATE, AND ENTITIES WHO
3 CONTRACT WITH A GOVERNMENT AGENCY IN THIS STATE, AND THEIR
4 SUBCONTRACTORS TO USE THE FEDERAL E-VERIFY PROGRAM TO VERIFY
5 THE WORK AUTHORIZATION OF NEWLY HIRED EMPLOYEES.

6 The General Assembly of North Carolina enacts:

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

9 "Article 1.

10 Various Provisions Related to Aliens."

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

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

15 "Article 2.

16 "Verification of Work Authorization by Entities That Contract With Government Agencies.

17 **§ 64-10. Definitions.**

18 The following definitions apply in this Article:

- 19 (1) Contractor. – A person or entity that contracts with a public entity for
20 construction or repair work, for the purchase of apparatus, supplies,
21 materials, or equipment, or for the purchase of any other services or
22 products.
- 23 (2) E-Verify. – The federal E-Verify program operated by the United States
24 Department of Homeland Security and other federal agencies, or any
25 successor or equivalent program used to verify the work authorization of
26 newly hired employees pursuant to federal law.
- 27 (3) Public entity. – A State agency, department, institution, board, commission,
28 university, community college, local education agency, county, city, or any
29 other political subdivision of this State. The term also includes any board,
30 commission, authority, or other body created by any of these entities.
- 31 (4) Subcontractor. – Any person or entity other than a contractor who furnishes
32 construction or repair work, apparatus, supplies, materials, equipment,



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1 services, or other products to a contractor or another subcontractor with a
2 good faith and reasonable belief that the goods or services were intended for
3 use in the contract between a contractor and a public entity. This term
4 includes any person who meets this definition regardless of the tier of the
5 subcontractor.

6 **"§ 64-11. Contractors contracting with public entities must use E-Verify; certification**
7 **required.**

8 (a) Contractors Must Use E-Verify. – Notwithstanding any other provision of law, a
9 public entity may not enter into a contract for construction or repair work, for the purchase of
10 apparatus, supplies, materials, or equipment, or for the purchase of any other services or
11 products, unless the contractor registers and participates in E-Verify to verify the work
12 authorization of new employees.

13 (b) Certification Required. – At the time any contract subject to this section is entered
14 into, the contractor shall certify to the public entity in writing all of the following:

15 (1) That the contractor is in compliance with subsection (a) of this section.

16 (2) That any subcontractor with which the contractor enters into a subcontract
17 concerning the contract between the contractor and the public entity will
18 have certified to the contractor in writing that it is in compliance with
19 G.S. 64-12 prior to commencing performance under the subcontract. The
20 contractor shall submit copies of these certifications to the public entity at
21 the time the contract is entered into, or in accordance with subsection (c) of
22 this section if received after the contract is entered into.

23 (3) That the contractor has not been subject to a civil penalty pursuant to
24 subsection (d) of this section within one year prior to making the
25 certification.

26 (c) Duty to Update Subcontractor Certifications. – Until completion of a contract, a
27 contractor shall submit to the public entity certifications received pursuant to G.S. 64-12 on a
28 monthly basis.

29 (d) Knowingly Submitting False Certification. – A person who knowingly submits a
30 false certification to a public entity under this section shall be guilty of a Class 1 misdemeanor.
31 A contractor shall not be guilty under this subsection for submitting to the public entity a
32 subcontractor's false certification, or for failing to investigate or verify a subcontractor's
33 certification. A person shall not be guilty under this subsection if the violation is the result of a
34 clerical mistake or other inadvertence.

35 **"§ 64-12. Subcontractors contracting with public entities must use E-Verify; certification**
36 **required.**

37 (a) Subcontractors Must Use E-Verify. – Notwithstanding any other provision of law, a
38 subcontractor shall register and participate in E-Verify to verify the work authorization of new
39 employees.

40 (b) Certification Required. – Prior to commencing performance under a subcontract
41 with a contractor or another subcontractor under or pursuant to a contract between a contractor
42 and a public entity, the subcontractor shall certify to the contractor in writing all of the
43 following:

44 (1) That the subcontractor is in compliance with subsection (a) of this section.

45 (2) That the subcontractor has not been subject to a penalty pursuant to
46 subsection (c) of this section within one year prior to making the
47 certification.

48 (c) Knowingly Submitting False Certification. – Any person who knowingly submits a
49 false certification under this section shall be guilty of a Class 1 misdemeanor. A person shall
50 not be guilty under this subsection if the violation is the result of a clerical mistake or other
51 inadvertence.

(d) Effect of Failure to Make Certification. – The failure of a subcontractor to provide the certification required by subsection (b) of this section shall preclude the subcontractor from maintaining a civil action against any person or entity for amounts owed to the subcontractor under or in connection with the subcontract."

SECTION 4. Chapter 64 of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Verification of Work Authorization.

"§ 64-25. Definitions.

The following definitions apply in this Article:

- (1) Affected business location. – The business location where an unauthorized alien performed work.
- (2) District attorney. – The district attorney's office for a prosecutorial district in which the employee whose employment allegedly violates G.S. 64-26 is or was employed.
- (3) Employ. – Hire an employee.
- (4) Employee. – Any individual who provides services or labor for an employer in this State for wages or other remuneration.
- (5) Employer. – Any person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.
- (6) E-Verify. – The federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
- (7) 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 in the State shall register and participate in E-Verify to verify the work authorization of new employees.
- (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. – The requirement to register and participate in E-Verify to verify the work authorization of new employees does not apply to an entity that employs seasonal temporary employees for 90 or fewer days during a 12-consecutive-month period.

"§ 64-27. Attorney General to prepare complaint form.

- (a) Preparation of Form. – The Attorney General 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 either the Attorney General or the district attorney.
- (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 Attorney General or the district attorney setting forth the basis for that belief. The complaint may be on a form prescribed by the Attorney General pursuant to G.S. 64-27 or may be made in any other form that gives the Attorney General or district attorney information that is sufficient to proceed with an investigation pursuant to G.S. 64-29.

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

3 **"§ 64-29. Investigation of complaints.**

4 (a) Complaints Received on Prescribed Form. – Upon receipt of a complaint on a form
5 prescribed pursuant to G.S. 64-27 that an employer allegedly knowingly employs an
6 unauthorized alien, the Attorney General or district attorney shall investigate whether the
7 employer has in fact violated G.S. 64-26.

8 (b) Complaints Not Received on Prescribed Form. – If a complaint is received but is not
9 submitted on a form prescribed pursuant to G.S. 64-27, the Attorney General or district
10 attorney may investigate whether the employer has violated G.S. 64-26.

11 (c) Anonymous Complaints Permitted. – Nothing in this section shall be construed to
12 prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint
13 form.

14 (d) Certain Complaints Shall Not Be Investigated. – The Attorney General or district
15 attorney shall not investigate complaints that are based solely on race, religion, gender,
16 ethnicity, or national origin.

17 (e) Assistance by Law Enforcement. – The Attorney General or district attorney may
18 request that the State Bureau of Investigation assist in investigating a complaint under this
19 section.

20 (f) Subpoena for Production of Documents. – The Attorney General or district attorney
21 may issue a subpoena for production of employment records that relate to the recruitment,
22 hiring, employment, or termination policies, practices, or acts of employment as part of the
23 investigation of a valid complaint under this section.

24 **"§ 64-30. Actions to be taken; commencement of action.**

25 If, after an investigation, the Attorney General or district attorney determines that the
26 complaint is not false and frivolous:

27 (1) The Attorney General or district attorney shall notify the United States
28 Customs and Immigration Enforcement of the presence of the suspected
29 unauthorized alien.

30 (2) The Attorney General or district attorney shall notify local law enforcement
31 agencies of the presence of the suspected unauthorized alien.

32 (3) If the complaint was originally filed with the Attorney General, the Attorney
33 General shall notify the district attorney to bring an action pursuant to
34 subdivision (4) of this subsection.

35 (4) The district attorney shall bring a civil action to enforce sanctions authorized
36 under G.S. 64-31, 64-32, and 64-33 for a violation of G.S. 64-26 against the
37 employer in the superior court district in which the affected business
38 location is located.

39 **"§ 64-31. Consequences of first violation.**

40 (a) Consequences. – For a first violation of G.S. 64-26, the court shall do all of the
41 following:

42 (1) Order employer to file affidavit. – Order the employer to file a signed sworn
43 affidavit with the district attorney within three business days after the order
44 issued pursuant to this subsection is issued. The affidavit shall state with
45 specificity that the employer has, after consultation with the employee,
46 requested a secondary or additional verification of employment authorization
47 through E-Verify.

48 (2) Order the employer to pay court costs.

49 (b) Effect of Failure to File Affidavit. – If an employer fails to timely file an affidavit
50 required by subdivision (a)(2) of this section or by G.S. 64-32 or G.S. 64-33, the court shall
51 order the employer to pay a civil penalty of ten thousand dollars (\$10,000).

1 **"§ 64-32. Consequences of second violation.**

2 For a second violation of G.S. 64-26 occurring after a court order issued pursuant to
3 G.S. 64-31, the court shall order the measures required by G.S. 64-31(a) and shall also order
4 the employer to pay a civil penalty of one thousand dollars (\$1,000), regardless of the number
5 of required employee verifications the employer failed to make.

6 **"§ 64-33. Consequences of third or subsequent violation.**

7 For a third or subsequent violation of G.S. 64-26 occurring after a court order issued
8 pursuant to G.S. 64-32, the court shall order the measures required by G.S. 64-31(a), and shall
9 also order the employer to pay a civil penalty of two thousand dollars (\$2,000) for each
10 required employee verification the employer failed to make.

11 **"§ 64-34. Court order; Attorney General to maintain copies of orders.**

12 (a) The court shall send a copy of the court's order to the Attorney General, and the
13 Attorney General shall maintain the copy.

14 (b) The Attorney General shall maintain copies of court orders that are received
15 pursuant to G.S. 64-31, 64-32, and 64-33, and shall maintain a database of the employers and
16 business locations that have a violation of G.S. 64-26 and make the court orders available on
17 the Attorney General's Web site.

18 **"§ 64-35. Work authorization shall be verified through the federal government.**

19 (a) Verification by Attorney General or District Attorney. – When investigating a
20 complaint under this Article, the Attorney General or district attorney shall verify the work
21 authorization of the alleged unauthorized alien with the federal government pursuant to 8
22 U.S.C. § 1373(c). The Attorney General or district attorney shall not attempt to independently
23 make a final determination of whether an alien is authorized to work in the United States.

24 (b) Verification by Court. – In considering whether an employee is an unauthorized
25 alien, the court shall consider only the federal government's determination issued pursuant to 8
26 U.S.C. § 1373(c). The court may take judicial notice of the federal government's determination
27 and may request the federal government to provide automated or testimonial verification
28 pursuant to 8 U.S.C. § 1373(c).

29 **"§ 64-36. Defenses.**

30 (a) E-Verify Use. – For purposes of this Article, proof that an employee's work
31 authorization was verified through E-Verify creates a rebuttable presumption that an employer
32 did not violate G.S. 64-26.

33 (b) Compliance With Federal Law. – For purposes of this Article, an employer who
34 establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b)
35 establishes an affirmative defense to a violation of G.S. 64-26. For purposes of this subsection,
36 an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b),
37 notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the
38 requirements, so long as there is a good faith attempt to comply with the requirements.

39 **"§ 64-37. Article does not require action that is contrary to federal or State law.**

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

42 **SECTION 5.** G.S. 126-7.1(f) reads as rewritten:

43 "(f) ~~Each State agency, department, institution, university, community college, and local~~
44 ~~education agency shall verify, in accordance with the Basic Pilot Program administered by the~~
45 ~~United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each~~
46 ~~individual's legal status or authorization to work in the United States after hiring the individual~~
47 ~~as an employee to work in the United States, register and participate in E-Verify to verify the~~
48 ~~work authorization of new employees. As used in this section, the term 'E-Verify' means the~~
49 ~~federal E-Verify program operated by the United States Department of Homeland Security and~~
50 ~~other federal agencies, or any successor or equivalent program used to verify the work~~
51 ~~authorization of newly hired employees pursuant to federal law."~~

1 **SECTION 6.** G.S. 153A-449 reads as rewritten:

2 "**§ 153A-449. Contracts with private ~~entities~~entities; contractors must use E-Verify.**

3 (a) Authority. – A county may contract with and appropriate money to any person,
4 association, or corporation, in order to carry out any public purpose that the county is
5 authorized by law to engage in.

6 (b) Contractors Must Use E-Verify. – No county may enter into a contract unless the
7 contractor complies with the requirements of G.S. 64-11."

8 **SECTION 7.** G.S. 160A-20.1 reads as rewritten:

9 "**§ 160A-20.1. Contracts with private ~~entities~~entities; contractors must use E-Verify.**

10 (a) Authority. – A city may contract with and appropriate money to any person,
11 association, or corporation, in order to carry out any public purpose that the city is authorized
12 by law to engage in.

13 (b) Contractors Must Use E-Verify. – No city may enter into a contract unless the
14 contractor complies with the requirements of G.S. 64-11."

15 **SECTION 8.** G.S. 143-129 is amended by adding a new subsection to read:

16 "(j) No contract subject to this section may be awarded by any board or governing body
17 of the State, institution of State government, or any political subdivision of the State unless the
18 contractor complies with the requirements of G.S. 64-11."

19 **SECTION 9.** Article 3 of Chapter 143 of the General Statutes is amended by
20 adding a new section to read:

21 "**§ 143-48.5. Contractors must use E-Verify.**

22 No contract subject to the provisions of this Article may be entered into unless the
23 contractor complies with the requirements of G.S. 64-11."

24 **SECTION 10.** G.S. 147-33.95 is amended by adding a new subsection to read:

25 "(g) No contract subject to the provisions of this Part may be entered into unless the
26 contractor complies with the requirements of G.S. 64-11."

27 **SECTION 11.** Article 5 of Chapter 153A of the General Statutes is amended by
28 adding a new section to read:

29 "**§ 153A-99.1. County verification of employee work authorization.**

30 (a) Counties Must Use E-Verify. – Each county shall register and participate in
31 E-Verify to verify the work authorization of new employees.

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

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

38 **SECTION 12.** Article 7 of Chapter 160A of the General Statutes is amended by
39 adding a new section to read:

40 "**§ 160A-169.1. Municipality verification of employee work authorization.**

41 (a) Municipalities Must Use E-Verify. – Each municipality shall register and participate
42 in E-Verify to verify the work authorization of new employees.

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

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

49 **SECTION 13.** Sections 11, 12, and 13 of this act become effective October 1,
50 2011. The remainder of this act becomes effective in accordance with the following schedule
51 and applies to all bids submitted and all contracts entered into on or after that date:

- 1 (1) January 1, 2012, for contractors, subcontractors, and employers that employ
2 500 or more employees in the State as of that date.
- 3 (2) July 1, 2012, for contractors, subcontractors, and employers that employ 100
4 or more employees but fewer than 500 employees in the State as of that date.
- 5 (3) January 1, 2013, for contractors, subcontractors, and employers that employ
6 25 or more employees but fewer than 100 employees in the State.