

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B 1069
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30470-MDa-133 (04/26)

Short Title: 2016 NC Employee Protection Act. (Public)

Sponsors: Representatives Cleveland, Conrad, Millis, and Whitmire (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS STATUTES RELATED TO IMMIGRATION.

3 Whereas, as originally filed, House Bill 318, 2015 Regular Session, would have
4 amended the definition of "employee" in the State E-Verify statutes to exclude farm workers,
5 independent contractors, or certain individuals who provide domestic services; and

6 Whereas, as originally filed, House Bill 318, 2015 Regular Session, would have
7 amended the definition of "employer" in the State E-Verify statutes to include persons who
8 employ five or more employees in this State; and

9 Whereas, as originally filed, House Bill 318, 2015 Regular Session, would have
10 prohibited the use of consular documents and certain other identity documents by government
11 officials without exception; and

12 Whereas, certain elements of the law enforcement community argued that law
13 enforcement would be less effective if an exception were not included in the bill that would allow
14 law enforcement to use those documents to determine the identity or residency of a person when
15 they are the only documents providing an indication of identity or residency available to the law
16 enforcement officer at the time; and

17 Whereas, the General Assembly sought to balance the aims of House Bill 318 as
18 originally filed with the needs of the law enforcement community by including such an exception
19 in the bill; and

20 Whereas, in the wake of the enactment of House Bill 318, what was meant to be a
21 narrow exception to accommodate law enforcement has been exploited by various groups who
22 have held ID drives and launched other efforts to entice individuals to obtain the forms of
23 identification whose use was meant to be largely prohibited under House Bill 318; Now, therefore,
24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** G.S. 64-25 reads as rewritten:

26 **"§ 64-25. Definitions.**

27 The following definitions apply in this Article:

- 28 (1) Commissioner. – The North Carolina Commissioner of Labor.
29 (2) Employ. – Hire an employee.
30 (3) Employee. – Any individual who provides services or labor for an employer in
31 this State for wages or other remuneration. ~~The term does not include an~~
32 ~~individual whose term of employment is less than nine months in a calendar~~
33 ~~year.~~ The term does not include a farm worker, an independent contractor, or an
34 individual who provides domestic service in a private home that is sporadic,
35 irregular, or intermittent.



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- 1 (4) Employer. – Any person, business entity, or other organization that transacts
2 business in this State and that employs ~~25~~five or more employees in this State.
3 This term does not include State agencies, counties, municipalities, or other
4 governmental bodies.
- 5 (5) E-Verify. – The federal E-Verify program operated by the United States
6 Department of Homeland Security and other federal agencies, or any successor
7 or equivalent program used to verify the work authorization of newly hired
8 employees pursuant to federal law.
- 9 (5a) Farm worker. – An individual who maintains farms, crops, or livestock by
10 doing physical labor or operating machinery under the supervision of a farmer,
11 rancher, or other agricultural manager. The term includes those who perform
12 tasks related to growing and harvesting grains, fruits, vegetables, nuts,
13 Christmas trees, and other agricultural crops but does not include those who
14 merely plant, transplant, or transport trees.
- 15 (5b) Independent contractor. – Any individual or entity who carries on independent
16 business, contracts to do a piece of work according to the individual's or entity's
17 own means and methods, and is subject to control only as to results. Whether an
18 individual or entity is an independent contractor, regardless of what the
19 individual or entity calls itself, shall be determined on a case-by-case basis.
20 Factors to be considered in that determination include, but are not limited to,
21 whether the individual or entity supplies the tools or materials; makes services
22 available to the general public; works for a number of clients at the same time;
23 has an opportunity for profit or loss as a result of labor or services provided;
24 invests in the facilities for work; directs the order or sequence in which the
25 work is to be done; and determines the hours during which the work is to be
26 done.
- 27 (6) Unauthorized alien. – As defined in 8 U.S.C. § 1324a(h)(3)."

28 **SECTION 2.** G.S. 15A-311(c) is repealed.

29 **SECTION 3.** The Department of Labor shall include on labor law posters printed
30 pursuant to G.S. 95-9 information regarding employers' responsibilities under G.S. 64-26 and
31 G.S. 143-133.3. This notice shall also include contact information for individuals wishing to file a
32 complaint alleging a violation of G.S. 64-26 or G.S. 143-133.3.

33 **SECTION 4.** There is appropriated from the General Fund to the Department of
34 Labor the sum of ten thousand dollars (\$10,000) for the 2016-2017 fiscal year to produce the labor
35 law posters required by Section 3 of this act.

36 **SECTION 5.** Section 3 of this act becomes effective July 1, 2016. The remainder of
37 this act becomes effective October 1, 2016.