

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

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**HOUSE DRH20088-MD-7 (11/20)**

Short Title:      Protect North Carolina Workers Act. (Public)

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

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF EMPLOYERS WHO ARE REQUIRED TO PARTICIPATE IN THE FEDERAL E-VERIFY PROGRAM; TO UNDO THE E-VERIFY CHANGES ENACTED IN S.L. 2014-119; TO REPEAL THE E-VERIFY EXEMPTION FOR TEMPORARY EMPLOYEES; TO EXCLUDE FARM WORKERS FROM THE DEFINITION OF EMPLOYEE UNDER ARTICLE 2 OF CHAPTER 64 OF THE GENERAL STATUTES; TO AUTHORIZE THE DEPARTMENT OF LABOR TO ENFORCE E-VERIFY REQUIREMENTS PERTAINING TO COUNTY AND CITY CONTRACTORS AND SUBCONTRACTORS; AND TO PROVIDE THAT CERTAIN CONSULATE OR EMBASSY DOCUMENTS MAY NOT BE USED TO DETERMINE A PERSON'S IDENTIFICATION OR RESIDENCE FOR GOVERNMENTAL AND LAW ENFORCEMENT PURPOSES.

The General Assembly of North Carolina enacts:

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

**"§ 64-25. Definitions.**

The following definitions apply in this Article:

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

- (4) Employer. – Any person, business entity, or other organization that transacts business in this State and that employs ~~255~~ or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.
- (5) 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.
- (5a) Farm worker. – An individual who maintains farms, crops, or livestock by doing physical labor or operating machinery under the supervision of a farmer, rancher, or other agricultural manager. The term includes those who perform tasks related to growing and harvesting grains, fruits, vegetables, nuts, Christmas trees, and other agricultural crops but does not include those who merely plant, transplant, or transport trees.
- (5b) Independent Contractor. – Any individual or entity who carries on independent business, contracts to do a piece of work according to the individual or entity's own means and methods, and is subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, shall be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done; and determines the hours during which the work is to be done.
- (6) Unauthorized alien. – As defined in 8 U.S.C. § 1324a(h)(3)."

**SECTION 2.** G.S. 160A-20.1(b) reads as rewritten:

"(b) Contractors Must Use E-Verify. – No city may enter into a contract ~~subject to G.S. 143-129~~ unless the contractor and the contractor's subcontractors under the contract comply with the requirements of Article 2 of Chapter 64 of the General Statutes. A city satisfies the requirements of this subsection if it includes a term in all contracts it enters into that requires contractors and the contractor's subcontractors to use E-Verify."

**SECTION 3.** G.S. 153A-449(b) reads as rewritten:

"(b) Contractors Must Use E-Verify. – No county may enter into a contract ~~subject to G.S. 143-129~~ unless the contractor and the contractor's subcontractors under the contract comply with the requirements of Article 2 of Chapter 64 of the General Statutes. A county satisfies the requirements of this

subsection if it includes a term in all contracts it enters into that requires contractors and the contractor's subcontractors to use E-Verify."

**SECTION 4.** G.S. 64-27 reads as rewritten:

**"§ 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~~G.S. 64-26, G.S. 153A-449(b), or G.S. 160A-20.1(b). 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."

**SECTION 5.** G.S. 64-28 reads as rewritten:

**"§ 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~~G.S. 64-26, that a county is violating or has violated G.S. 153A-449(b), or that a city is violating or has violated G.S. 160A-20.1(b), 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."

**SECTION 6.** G.S. 64-29 reads as rewritten:

**"§ 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, that a county is violating or has violated G.S. 153A-449(b), or that a city is violating or has violated G.S. 160A-20.1(b), the Commissioner shall investigate whether the employer has in fact violated ~~G.S. 64-26~~the applicable statute.

(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."

**SECTION 7.** G.S. 64-30 reads as rewritten:

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

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

(1) If the alleged violation is of G.S. 64-26:

(1)a. 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.

(1)b. If, during the course of the hearing required by ~~subdivision~~ ~~(1)~~sub-subdivision a. 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.1. United States Immigration and Customs Enforcement.

b.2. Local law enforcement agencies.

(2) If the alleged violation is of G.S. 153A-449(b) or G.S. 160A-20.1(b), the Commissioner shall hold a hearing to determine if a violation of the applicable statute has occurred and, if appropriate, shall take action under G.S. 64-33.1."

SECTION 8. The catch-line for G.S. 64-31 reads as rewritten:

**"§ 64-31. Consequences of first ~~violation~~-violation of G.S. 64-26."**

SECTION 9. The catch-line for G.S. 64-32 reads as rewritten:

**"§ 64-32. Consequences of second ~~violation~~-violation of G.S. 64-26."**

SECTION 10. The catch-line for G.S. 64-33 reads as rewritten:

**"§ 64-33. Consequences of third or subsequent ~~violation~~-violation of G.S. 64-26."**

SECTION 11. Article 2 of Chapter 64 of the General Statutes is amended by adding a new section to read:

**"§ 64-33.1. Consequences of violation of G.S. 153A-449(b) or G.S. 160A-20.1(b).**

For violation of G.S. 153A-449(b) or G.S. 160A-20.1(b), the Commissioner shall notify the city or county found to have committed the violation that it is in violation of the applicable statute. The Department of Labor shall maintain a list of counties and cities issued notices pursuant to this section and shall make that list available on its Web site."

SECTION 12. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Identification Documents.

**"§ 15A-306. Consulate documents not acceptable as identification.**

(a) The following documents are not acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:

- (1) A matricula consular or other similar document, other than a valid passport, issued by a consulate or embassy of another country.
- (2) An identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly.

(b) No local government or law enforcement agency may establish, by policy or ordinance, the acceptability of any of the documents described in subsection (a) of this section as a form of identification to be used to determine the identity or residency of any person. Any local government policy or ordinance that contradicts this section is hereby repealed."

**SECTION 13.** G.S. 20-7(b4) reads as rewritten:

"(b4) Examples of documents that are reasonably reliable indicators of residency include, but are not limited to, any of the following:

- (1) A pay stub with the payee's address.
- (2) A utility bill showing the address of the applicant-payor.
- (3) A contract for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.
- (4) A receipt for personal property taxes paid.
- (5) A receipt for real property taxes paid to a North Carolina locality.
- (6) A current automobile insurance policy issued to the applicant and showing the applicant's address.
- (7) A monthly or quarterly financial statement from a North Carolina regulated financial institution.
- ~~(8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.~~
- ~~(9) A document similar to that described in subsection (8) of this section, issued by the consulate or embassy of another country. This subdivision only applies if the Division has consulted with the United State Department of State and is satisfied with the reliability of such document."~~

**SECTION 14.** G.S. 58-2-164(c) reads as rewritten:

"(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this section. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in

accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining reliable proof of North Carolina residency from the applicant or the applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes but is not limited to:

- (1) A pay stub with the payee's address.
- (2) A utility bill showing the address of the applicant-payor.
- (3) A lease for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.
- (4) A receipt for personal property taxes paid.
- (5) A receipt for real property taxes paid to a North Carolina locality.
- (6) A monthly or quarterly financial statement from a North Carolina regulated financial institution.
- (7) A valid unexpired North Carolina driver's license.
- ~~(8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.~~
- ~~(9) A document similar to that described in subdivision (8) of this section, issued by the consulate or embassy of another country that would be accepted by the North Carolina Division of Motor Vehicles as set forth in G.S. 20-7(b4)(9).~~
- (10) A valid North Carolina vehicle registration.
- (11) A valid military ID.
- (12) A valid student ID for a North Carolina school or university."

**SECTION 15.** G.S. 108A-55.3(b) reads as rewritten:

"(b) An applicant may meet the requirements of subsection (a) of this section by providing at least two of the following documents:

- (1) A valid North Carolina drivers license or other identification card issued by the North Carolina Division of Motor Vehicles.
- (2) A current North Carolina rent or mortgage payment receipt, or current utility bill in the name of the applicant or the applicant's legal spouse showing a North Carolina address.
- (3) A valid North Carolina motor vehicle registration in the applicant's name and showing the applicant's current address.
- (4) A document showing that the applicant is employed in this State.
- (5) One or more documents proving that the applicant's domicile in the applicant's prior state of domicile has ended, such as closing of a bank account, termination of employment, or sale of a home.
- (6) The tax records of the applicant or the applicant's legal spouse, showing a current North Carolina address.
- (7) A document showing that the applicant has registered with a public or private employment service in this State.

- (8) A document showing that the applicant has enrolled the applicant's children in a public or private school or child care facility located in this State.
- (9) A document showing that the applicant is receiving public assistance or other services requiring proof of domicile, other than medical assistance, in this State.
- (10) Records from a health department or other health care provider located in this State showing the applicant's current North Carolina address.
- (11) A written declaration made under penalty of perjury from a person who has a social, family, or economic relationship with the applicant and who has personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (12) Current North Carolina voter registration card.
- (13) A document from the U.S. Department of Veterans Affairs, U.S. Department of Defense, or the U.S. Department of Homeland Security verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (14) Official North Carolina school records, signed by school officials, or diplomas issued by North Carolina schools, including secondary schools, community colleges, colleges, and universities verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- ~~(15) A document issued by the Mexican consular or other foreign consulate verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment."~~

**SECTION 16.** This act becomes effective October 1, 2015.