

Introduced by Legislators Beedenbender and Eddington

**RESOLUTION NO. 333 -2008, ADOPTING LOCAL
LAW NO. 16 -2008, A LOCAL LAW TO PROMOTE FAIR
BUSINESS PRACTICES BY STRENGTHENING
REQUIREMENTS FOR OCCUPATIONAL LICENSES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on February 5, 2008, a proposed local law entitled, "**A LOCAL LAW TO PROMOTE FAIR BUSINESS PRACTICES BY STRENGTHENING REQUIREMENTS FOR OCCUPATIONAL LICENSES**"; now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 16 -2008, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROMOTE FAIR BUSINESS PRACTICES BY
STRENGTHENING REQUIREMENTS FOR OCCUPATIONAL
LICENSES**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that federal law requires businesses to verify that their employees are legally eligible to be employed in the United States. However, this law (known popularly as the "Simpson-Mazzoli" law) has never been effectively enforced and many employers continue to ignore its requirements.

This Legislature further finds that some employers also fail to pay taxes (Social Security, Medicare, unemployment taxes) that are designed to provide a financial safety net for their employees.

This Legislature also finds and determines that employers who fail to comply with applicable federal, state and local laws gain an unfair financial advantage over employers who play by the rules and who necessarily incur additional costs when they properly hire employees, obtain insurance and pay taxes.

This Legislature also finds that the County of Suffolk adopted Local Law No. 52-2006 to require companies doing business with the County to certify their compliance with federal law with respect to the lawful hiring of employees.

This Legislature further finds that the County of Suffolk, through its Office of Consumer Affairs, presently licenses and regulates a number of occupations to ensure that the County's residents and consumers are served by reputable businesses and protected from unscrupulous operators.

This Legislature also determines that the County's licensees should comply with all applicable laws and regulations including those relating to the proper hiring of employees and payment of payroll taxes.

This Legislature further determines that there exists a Compliance Unit within the Suffolk County Department of Labor that currently investigates similar violations.

Therefore, the purpose of this law is to provide a means of supplementing enforcement of federal and state laws, by providing an enforcement mechanism at the County level against non-compliant occupational license holders in order to ensure that all applicants for occupational licenses affirm that their employees are legally eligible to be employed in the United States and that all necessary payroll taxes are being paid.

Section 2. Amendments.

I. Chapter 275 of the SUFFOLK COUNTY CODE is hereby amended as follows:

Chapter 275, Electricians and Plumbers

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§ 275-3. Application procedure; qualifications; examinations.

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B. Qualifications of applicant.

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- (4) All applications shall include a representation by the applicant that they are in compliance with Title 8 U.S.C. Section 1324a, with respect to the hiring of employees. If such representation is not made, a license will not be issued. An applicant shall be obligated to continue to comply with the requirements of Title 8 U.S.C. Section 1324a, during the term of their license and their failure to so comply, as determined by the Director after an investigation by the Suffolk County Department of Labor or based upon a finding of a federal court, agency or administrative law judge under the procedures set forth in Title 8 U.S.C. §1324a, shall constitute grounds for the imposition of a fine or the suspension or revocation of a license or the denial of an application for the renewal of a license, in accordance with the applicable provisions of this Chapter. Any determination made hereunder by the County of Suffolk shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- (5) All applications shall include a representation by the applicant that they are making all required payroll tax payments for their employees including Social Security taxes, Medicare taxes, and state and federal unemployment taxes. If such representation is not made, a license will not be issued. The applicant's failure to make required payroll tax payments during the term of their license, as determined by the Director after an investigation by the Suffolk County Department of Labor or based upon a finding of a federal or state court, administrative law judge, hearing officer, agency of competent jurisdiction, shall constitute grounds for the imposition of a fine or the suspension or revocation of a license or the denial of an application for the renewal of a license, in accordance with the applicable provisions of this Chapter. Any determination made hereunder by the County of Suffolk shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

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§ 275-15. Fines; suspension or revocation of licenses.

The Director shall have the power to impose a fine not to exceed \$750 for a first violation and \$1,500 for any subsequent violation upon a licensee or to suspend or revoke a license or to deny an application for the renewal of a license for any one or more of the following causes:

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- E. Discrimination against any employee or applicant for employment with respect to the recruiting, hiring or discharge of such employee or applicant for employment, because of race, creed, color, national origin, sex, age, gender, disability, sexual orientation, military status, or marital status, or in the case of a citizen or national of the United States or an alien who is lawfully admitted for permanent or temporary residence, or a refugee or an individual who is granted asylum, because of such

individual's citizenship status.

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II. Chapter 345 of the SUFFOLK COUNTY CODE is hereby amended as follows:

Chapter 345 LICENSED OCCUPATIONS
ARTICLE I, Provisions Applicable to All Licenses

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§ 345-5. Application Procedure; information required; qualifications; issuance of license.

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K. All license applications shall include a representation by the applicant that they are in compliance with Title 8 U.S.C. Section 1324a, with respect to the hiring of employees. If such representation is not made, a license shall not be issued. An applicant shall be obligated to continue to comply with the requirements of Title 8 U.S.C. Section 1324a, during the term of their license and their failure to so comply, as determined by the Director after an investigation by the Suffolk County Department of Labor or based upon a finding of a federal court, agency or administrative law judge under the procedures set forth in Title 8 U.S.C. Section 1324a, shall constitute grounds for the imposition of a fine or the suspension or revocation of a license or the denial of an application for the renewal of a license, in accordance with the applicable provisions of this Chapter.

L. All applications shall include a representation by the applicant that they are making all required payroll tax payments for their employees including Social Security taxes, Medicare taxes, and state and federal unemployment taxes. If such representation is not made, a license will not be issued. The applicant's failure to make required payroll tax payments during the term of their license, as determined by the Director after an investigation by the Suffolk County Department of Labor or based upon a finding of a federal or state court, administrative law judge, hearing officer, or agency of competent jurisdiction shall constitute grounds for the imposition of a fine or the suspension or revocation of a license or the denial of an application for the renewal of a license, in accordance with the applicable provisions of this Chapter.

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§ 345-10. Prohibited acts.

The following acts are prohibited:

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- J. Discrimination against any employee or applicant for employment with respect to the recruiting, hiring or discharge of such employee or applicant for employment, because of race, creed, color, national origin, sex, age, gender, disability, sexual orientation, military status, or marital status, or in the case of a citizen or national of the United States or an alien who is lawfully admitted for permanent or temporary residence, or a refugee or an individual who is granted asylum, because of such individual's citizenship status.

Section 3. Affirmative Defense.

It shall be an affirmative defense in any hearing or proceeding brought under this law alleging a violation of Title 8 U.S.C. § 1324a, that an applicant or licensee has complied in good faith with the requirements therein.

Section 4. Investigations.

The Department of Labor is hereby authorized and empowered to investigate alleged violations of this law related to illegal hiring and non-payment of payroll taxes upon the request of the Director of the Office of Consumer Affairs. Authorized employees of the Department of Labor shall be entitled to request and review records maintained by licensees which demonstrate their compliance with this law. Upon the completion of an investigation, the Department of Labor shall forward its findings to the Director of Consumer Affairs.

Section 5. Promulgation of Rules and Regulations.

A. The Suffolk County Office of Consumer Affairs is hereby authorized, empowered and directed to promulgate such rules and regulations as it deems necessary for the implementation and enforcement of the provisions of this law. Such rules and regulations shall establish that the Office of Consumer Affairs shall refer all complaints of unlawful discrimination and unlawful discriminatory practices to the Suffolk County Human Rights Commission.

B. The Suffolk County Department of Labor is hereby authorized, empowered and directed to promulgate such rules and regulations as it deems necessary to carry out the investigations described in Section 4 of this law.

Section 6. Applicability.

This law shall apply to all applications for licenses and license renewals submitted to the Office of Consumer Affairs on and after the effective date of this law.

Section 7. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 8. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 9. Effective Date.

This law shall take effect 120 days after its filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language

___ Underlining denotes addition of new language

DATED: May 13, 2008

APPROVED BY:

/s/ Steve Levy

County Executive of Suffolk County

Date: May 28, 2008

After a public hearing duly held on May 27, 2008

Filed with the Secretary of State on June 23, 2008