

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

H

2

**HOUSE BILL 318
Committee Substitute Favorable 4/15/15**

Short Title: Protect North Carolina Workers Act.

(Public)

Sponsors:

Referred to:

March 23, 2015

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE NUMBER OF EMPLOYERS WHO ARE REQUIRED TO
2 PARTICIPATE IN THE FEDERAL E-VERIFY PROGRAM; TO REPEAL THE
3 E-VERIFY EXEMPTION FOR TEMPORARY EMPLOYEES; TO EXCLUDE FARM
4 WORKERS FROM THE DEFINITION OF EMPLOYEE UNDER ARTICLE 2 OF
5 CHAPTER 64 OF THE GENERAL STATUTES; TO REQUIRE E-VERIFY
6 COMPLIANCE IN CERTAIN GOVERNMENTAL CONTRACTS; AND TO PROVIDE
7 THAT CERTAIN CONSULATE OR EMBASSY DOCUMENTS MAY NOT BE USED
8 TO DETERMINE A PERSON'S IDENTIFICATION OR RESIDENCE FOR
9 GOVERNMENTAL AND LAW ENFORCEMENT PURPOSES.

10 The General Assembly of North Carolina enacts:

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

12 **"§ 64-25. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Commissioner. – The North Carolina Commissioner of Labor.
- 15 (2) Employ. – Hire an employee.
- 16 (3) Employee. – Any individual who provides services or labor for an employer
17 in this State for wages or other remuneration. ~~The term does not include an~~
18 ~~individual whose term of employment is less than nine months in a calendar~~
19 ~~year.~~ The term does not include a farm worker, an independent contractor, or
20 an individual who provides domestic service in a private home that is
21 sporadic, irregular, or intermittent.
- 22 (4) Employer. – Any person, business entity, or other organization that transacts
23 business in this State and that employs ~~255~~ 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.
- 30 (5a) Farm worker. – An individual who maintains farms, crops, or livestock by
31 doing physical labor or operating machinery under the supervision of a
32 farmer, rancher, or other agricultural manager. The term includes those who
33 perform tasks related to growing and harvesting grains, fruits, vegetables,
34 nuts, Christmas trees, and other agricultural crops but does not include those
35 who merely plant, transplant, or transport trees.
- 36



1 (5b) Independent contractor. – Any individual or entity who carries on
2 independent business, contracts to do a piece of work according to the
3 individual or entity's own means and methods, and is subject to control only
4 as to results. Whether an individual or entity is an independent contractor,
5 regardless of what the individual or entity calls itself, shall be determined on
6 a case-by-case basis. Factors to be considered in that determination include,
7 but are not limited to, whether the individual or entity supplies the tools or
8 materials; makes services available to the general public; works for a
9 number of clients at the same time; has an opportunity for profit or loss as a
10 result of labor or services provided; invests in the facilities for work; directs
11 the order or sequence in which the work is to be done; and determines the
12 hours during which the work is to be done.

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

14 **SECTION 2.(a)** Article 8 of Chapter 143 of the General Statutes is amended to add
15 a new section to read:

16 **"§ 143-133.3. E-verify compliance.**

17 (a) No board or governing body of the State, or of any institution of the State
18 government, or of any political subdivision of the State, may enter into a contract unless the
19 contractor, and the contractor's subcontractors under the contract, comply with the requirements
20 of Article 2 of Chapter 64 of the General Statutes.

21 (b) A board or governing body of the State, or of any institution of the State
22 government, or of any political subdivision of the State, may satisfy the requirements of this
23 section if the contract includes a term requiring the contractor, and the contractor's
24 subcontractors, to comply with the requirements of Article 2 of Chapter 64 of the General
25 Statutes.

26 (c) This section shall not apply to any of the following:

27 (1) Contracts for transportation.

28 (2) Contracts for lodging.

29 (3) Contracts solely for the purchase of goods.

30 (4) Contracts let under G.S. 143-129(e)(9) or (9a)."

31 **SECTION 2.(b)** G.S. 160A-20.1(b) is repealed.

32 **SECTION 2.(c)** G.S. 153A-449(b) is repealed.

33 **SECTION 3.** G.S. 159-28(e) reads as rewritten:

34 "(e) Penalties. – If an officer or employee of a local government or public authority
35 incurs an obligation or pays out or causes to be paid out any funds in violation of this section,
36 he and the sureties on his official bond are liable for any sums so committed or disbursed. If the
37 finance officer or any properly designated deputy finance officer gives a false certificate to any
38 contract, agreement, purchase order, check, draft, or other document, he and the sureties on his
39 official bond are liable for any sums illegally committed or disbursed thereby. Inclusion of the
40 contract term in accordance with G.S. 143-133.3(b) shall be deemed in compliance with
41 G.S. 143-133.3(a)."

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

43 **"§ 64-27. Commissioner of Labor to prepare complaint form.**

44 (a) Preparation of Form. – The Commissioner shall prescribe a complaint form for a
45 person to allege a violation of ~~G.S. 64-26~~ G.S. 64-26 or G.S. 143-133.3. The form shall clearly
46 state that completed forms may be sent to the Commissioner.

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

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

51 **"§ 64-28. Reporting of complaints.**

1 (a) Filing of Complaint. – Any person with a good faith belief that ~~an employer is~~
2 ~~violating or has violated~~ a violation of G.S. 64-26 or G.S. 143-133.3 ~~has occurred~~ may file a
3 complaint with the Commissioner setting forth the basis for that belief. The complaint may be
4 on a form prescribed by the Commissioner pursuant to G.S. 64-27 or may be made in any other
5 form that gives the Commissioner information that is sufficient to proceed with an investigation
6 pursuant to G.S. 64-29. Nothing in this section shall be construed to prohibit the filing of
7 anonymous complaints that are not submitted on a prescribed complaint form.

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

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

11 **"§ 64-29. Investigation of complaints.**

12 (a) Investigation. – Upon receipt of a complaint ~~pursuant to G.S. 64-28 that an~~
13 ~~employer is allegedly violating or has allegedly violated~~ G.S. 64-26, filed in accordance with
14 G.S. 64-28, the Commissioner shall investigate whether ~~the employer has in fact violated~~
15 G.S. 64-26, a violation of G.S. 64-26 or G.S. 143-133.3 has in fact occurred.

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

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

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

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

26 **"§ 64-30. Actions to be taken; hearing.**

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

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

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

33 ~~(2)~~b. If, during the course of the hearing required by ~~subdivision~~
34 ~~(1)~~sub-subdivision a. of subdivision (1) of this section, the
35 Commissioner concludes that there is a reasonable likelihood that an
36 employee is an unauthorized alien, the Commissioner shall notify the
37 following entities of the possible presence of an unauthorized alien:

38 a.1. United States Immigration and Customs Enforcement.

39 b.2. Local law enforcement agencies.

40 (2) If the alleged violation is of G.S. 143-133.3, the Commissioner shall hold a
41 hearing to determine if a violation of the applicable statute has occurred and,
42 if appropriate, shall take action under G.S. 64-33.1."

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

44 **"§ 64-31. Consequences of first ~~violation.~~ violation of G.S. 64-26."**

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

46 **"§ 64-32. Consequences of second ~~violation.~~ violation of G.S. 64-26."**

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

48 **"§ 64-33. Consequences of third or subsequent ~~violation.~~ violation of G.S. 64-26."**

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

51 **"§ 64-33.1. Consequences of violation of G.S. 143-133.3.**

1 For violation of G.S. 143-133.3, the Commissioner shall notify the board or governing body
2 of the State, or of any institution of the State government, or of any political subdivision of the
3 State, found to have committed the violation that the board or governing body of the State, or
4 of any institution of the State government, or of any political subdivision of the State, is in
5 violation of the applicable statute. The Department of Labor shall maintain a list of any boards
6 or governing bodies of the State, or of any institutions of the State government, or of any
7 political subdivisions of the State, issued notices pursuant to this section and shall make that list
8 available on its Web site."

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

11 "Article 18.

12 "Identification Documents.

13 **"§ 15A-306. Consulate documents not acceptable as identification.**

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

17 (1) A matricula consular or other similar document, other than a valid passport,
18 issued by a consulate or embassy of another country.

19 (2) An identity document issued or created by any person, organization, county,
20 city, or other local authority, except where expressly authorized to be used
21 for this purpose by the General Assembly.

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

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

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

29 (1) A pay stub with the payee's address.

30 (2) A utility bill showing the address of the applicant-payor.

31 (3) A contract for an apartment, house, modular unit, or manufactured home
32 with a North Carolina address signed by the applicant.

33 (4) A receipt for personal property taxes paid.

34 (5) A receipt for real property taxes paid to a North Carolina locality.

35 (6) A current automobile insurance policy issued to the applicant and showing
36 the applicant's address.

37 (7) A monthly or quarterly financial statement from a North Carolina regulated
38 financial institution.

39 ~~(8) A matricula consular or substantially similar document issued by the~~
40 ~~Mexican Consulate for North Carolina.~~

41 ~~(9) A document similar to that described in subsection (8) of this section, issued~~
42 ~~by the consulate or embassy of another country. This subdivision only~~
43 ~~applies if the Division has consulted with the United State Department of~~
44 ~~State and is satisfied with the reliability of such document."~~

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

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

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

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

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

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

- 26 (1) A valid North Carolina drivers license or other identification card issued by
27 the North Carolina Division of Motor Vehicles.
- 28 (2) A current North Carolina rent or mortgage payment receipt, or current utility
29 bill in the name of the applicant or the applicant's legal spouse showing a
30 North Carolina address.
- 31 (3) A valid North Carolina motor vehicle registration in the applicant's name
32 and showing the applicant's current address.
- 33 (4) A document showing that the applicant is employed in this State.
- 34 (5) One or more documents proving that the applicant's domicile in the
35 applicant's prior state of domicile has ended, such as closing of a bank
36 account, termination of employment, or sale of a home.
- 37 (6) The tax records of the applicant or the applicant's legal spouse, showing a
38 current North Carolina address.
- 39 (7) A document showing that the applicant has registered with a public or
40 private employment service in this State.
- 41 (8) A document showing that the applicant has enrolled the applicant's children
42 in a public or private school or child care facility located in this State.
- 43 (9) A document showing that the applicant is receiving public assistance or
44 other services requiring proof of domicile, other than medical assistance, in
45 this State.
- 46 (10) Records from a health department or other health care provider located in
47 this State showing the applicant's current North Carolina address.
- 48 (11) A written declaration made under penalty of perjury from a person who has
49 a social, family, or economic relationship with the applicant and who has
50 personal knowledge of the applicant's intent to live in North Carolina

- 1 permanently or for an indefinite period of time or that the applicant is
2 residing in North Carolina to seek employment or with a job commitment.
- 3 (12) Current North Carolina voter registration card.
- 4 (13) A document from the U.S. Department of Veterans Affairs, U.S. Department
5 of Defense, or the U.S. Department of Homeland Security verifying the
6 applicant's intent to live in North Carolina permanently or for an indefinite
7 period of time or that the applicant is residing in North Carolina to seek
8 employment or with a job commitment.
- 9 (14) Official North Carolina school records, signed by school officials, or
10 diplomas issued by North Carolina schools, including secondary schools,
11 community colleges, colleges, and universities verifying the applicant's
12 intent to live in North Carolina permanently or for an indefinite period of
13 time or that the applicant is residing in North Carolina to seek employment
14 or with a job commitment.
- 15 ~~(15) A document issued by the Mexican consular or other foreign consulate~~
16 ~~verifying the applicant's intent to live in North Carolina permanently or for~~
17 ~~an indefinite period of time or that the applicant is residing in North Carolina~~
18 ~~to seek employment or with a job commitment."~~

19 **SECTION 16.** This act becomes effective October 1, 2015, and applies to contracts
20 entered into on or after that date.