

GENERAL ASSEMBLY OF NORTH CAROLINA
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BILL DRAFT 2011-SH-11 [v.11] (05/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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

(Public)

Sponsors: Representative.

Referred to:

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,
33 services, or other products to a contractor or another subcontractor with a



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

5 **"§ 64-11. Contractors contracting with public entities must use E-Verify; certification**
6 **required.**

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

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

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

15 (2) That any subcontractor with which the contractor has entered into a
16 subcontract concerning the contract between the contractor and the public
17 entity has certified to the contractor in writing that it is in compliance with
18 G.S. 64-12. The contractor shall submit copies of these certifications to the
19 public entity at the time the contract is entered into.

20 (3) That the contractor has not been convicted pursuant to subsection (d) of this
21 section within one year prior to making the certification.

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

25 (d) Knowingly Submitting False Certification Is a Felony. – A person who knowingly
26 submits a false certification to a public entity under this section shall be guilty of a Class I
27 felony. However, a contractor shall not be guilty of a Class I felony for submitting to the public
28 entity a subcontractor's false certification, or for failing to investigate or verify a subcontractor's
29 certification. A person shall not be guilty under this subsection if the violation is the result of a
30 clerical mistake or other inadvertence.

31 **"§ 64-12. Subcontractors contracting with public entities must use E-Verify; certification**
32 **required.**

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

36 (b) Certification Required. – Within seven business days of first furnishing construction
37 or repair work, apparatus, supplies, materials, equipment, services, or other products to a
38 contractor or another subcontractor under or pursuant to a contract between a contractor and a
39 public entity, the subcontractor shall certify to the contractor in writing all of the following:

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

41 (2) That the subcontractor has not been convicted pursuant to subsection (c) of
42 this section within one year prior to making the certification.

43 (c) Knowingly Submitting False Certification Is a Felony. – Any person who
44 knowingly submits a false certification under this section shall be guilty of a Class I felony. A
45 person shall not be guilty under this subsection if the violation is the result of a clerical mistake
46 or other inadvertence.

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

1 employing a person for which use of E-Verify did not produce verification
2 of work authorization.

3 (11) License. – Any permit, certificate, approval, registration, charter, or similar
4 form of authorization, regardless of its form, issued by an agency and
5 required by law in order to operate a business in this State. This term does
6 not include any of the following:

7 a. A professional license.

8 b. A permit, certificate, approval, registration, charter, or similar form
9 of authorization, regardless of its form, issued pursuant to Chapter
10 113A or Article 21 of Chapter 143 of the General Statutes.

11 c. A water or wastewater permit issued pursuant to Articles 10 or 11 of
12 Chapter 130A of the General Statutes.

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

14 **"§ 64-26. Verification of employee work authorization.**

15 (a) Employers Must Use E-Verify. – Each employer in the State shall register and
16 participate in E-Verify to verify the work authorization of new employees.

17 (b) Employer Preservation of E-Verify Forms. – Each employer shall retain the record
18 of the verification of work authorization required by this section while the employee is
19 employed, and for one year thereafter.

20 (c) The requirement to register and participate in E-Verify to verify the work
21 authorization of new employees does not apply to the following:

22 (1) An entity that employs seasonal temporary employees for 90 or fewer days
23 during a 12 consecutive month period is exempt from this section.

24 (2) A company that employs 24 or fewer employees in the State is exempt from
25 this section.

26 (3) An independent contractor hired by the employer.

27 **"§ 64-27. Knowingly employing unauthorized alien prohibited.**

28 An employer shall not knowingly employ an unauthorized alien on or after the effective
29 date of this act.

30 **"§ 64-28. Attorney General to prepare complaint form.**

31 (a) Preparation of Form. – The Attorney General shall prescribe a complaint form for a
32 person to allege a violation of G.S. 64-26 or G.S. 64-27. The form shall clearly state that
33 completed forms may be sent to either the Attorney General or the district attorney.

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

37 **"§ 64-29. Reporting of complaints.**

38 (a) Filing of Complaint. – Any person with a good faith belief that an employer is
39 violating or has violated G.S. 64-26 or G.S. 64-27 may file a complaint with the Attorney
40 General or the district attorney setting forth the basis for that belief. The complaint may be on a
41 form prescribed by the Attorney General pursuant to G.S. 64-28 or may be made in any other
42 form that gives the Attorney General or district attorney information that is sufficient to
43 proceed with an investigation pursuant to G.S. 64-30.

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

46 **"§ 64-30. Investigation of complaints.**

47 (a) Complaints Received on Prescribed Form. – Upon receipt of a complaint on a form
48 prescribed pursuant to G.S. 64-28 that an employer allegedly knowingly employs an
49 unauthorized alien, the Attorney General or district attorney shall investigate whether the
50 employer has in fact violated G.S. G.S. 64-26 or 64-27.

1 **(b) Complaints Not Received on Prescribed Form.** – If a complaint is received but is not
2 submitted on a form prescribed pursuant to G.S. 64-28, the Attorney General or district
3 attorney may investigate whether the employer has violated G.S. 64-26 or G.S. 64-27.

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

7 **(d) Certain Complaints Shall Not Be Investigated.** – The Attorney General or district
8 attorney shall not investigate complaints that are based solely on race, color, or national origin.

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

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

16 **"§ 64-31. Actions to be taken; commencement of action.**

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

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

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

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

27 (4) The district attorney shall bring a civil action for a violation of G.S. 64-26 or
28 G.S. 64-27 against the employer in the superior court district in which the
29 affected business location is located.

30 **"§ 64-32. Determining whether violation is first, second, or subsequent.**

31 **(a) Determination.** – For purposes of G.S. 64-33 through 64-35, a violation of G.S. 64-
32 26 or G.S. 64-27 shall be considered:

33 (1) A first violation by an employer at a business location if the violation did not
34 occur during a probationary period ordered by the court under G.S. 64-33.

35 (2) A second violation by an employer at a business location if the violation
36 occurred during a probationary period ordered by the court under
37 G.S. 64-33.

38 (3) A subsequent violation by an employer at a business location if the employer
39 has previously been found to have committed a second violation, as that
40 term is defined in subdivision (2) of this subsection, at that business location.

41 **(b) Second and Subsequent Violations.** – A second violation of G.S. 64-26 or G.S. 64-
42 26 or G.S. 64-27 shall be based only on an unauthorized alien who is employed by the
43 employer after an action has been brought pursuant to G.S. 64-31(4). A subsequent violation
44 shall be based only on an unauthorized alien who is employed by the employer after the
45 employer is found to have committed a second violation.

46 **"§ 64-33. Consequences of first violation.**

47 **(a) Consequences.** – For a first violation of G.S. 64-26 or G.S. 64-27, the court shall do
48 all of the following:

49 (1) Order the termination of employment of unauthorized aliens. – Order the
50 employer to terminate the employment of all unauthorized aliens.

1 (2) Order employer to file affidavit. – Order the employer to file a signed sworn
2 affidavit with the district attorney within three business days after the order
3 issued pursuant to this subsection is issued. The affidavit shall state with
4 specificity that the employer has taken one of the following actions:

5 a. Terminated the unauthorized alien's employment.

6 b. After consultation with the employee, requested a secondary or
7 additional verification of employment authorization through
8 E-Verify.

9 c. Attempted to terminate the unauthorized alien's employment, and the
10 termination has been challenged in a court of competent jurisdiction.

11 (b) Effect of Failure to File Affidavit. – If an employer fails to timely file an affidavit
12 required by subdivision (a)(2) of this section or by G.S. 64-34(a), the court shall order the
13 appropriate agencies to suspend all affected licenses held by the employer. Licenses suspended
14 under this subsection shall remain suspended until the employer files the affidavit. Upon receipt
15 of a court order issued pursuant to this subsection, and notwithstanding any other provision of
16 law, the appropriate agencies shall suspend the affected licenses in accordance with the court's
17 order. The court shall send a copy of the court's order to the Attorney General, and the Attorney
18 General shall maintain the copy pursuant to G.S. 64-35. Notwithstanding any other provision of
19 law, upon the filing of the affidavit, the suspended licenses shall be reinstated immediately by
20 the appropriate agencies.

21 **"§ 64-33A Consequences of second violation.**

22 For a second violation of G.S. 64-26 or G.S. 64-27, the court shall order the measures
23 required by G.S. 64-33(a)(1) and (2) and shall also order the employer to be subject to a
24 three-year probationary period for the affected business location. During the probationary
25 period the employer shall file quarterly reports with the district attorney of each new employee
26 who is hired by the employer at the affected business location.

27 **"§ 64-34. Consequences of third violation.**

28 For a third violation of G.S. 64-26 or G.S. 64-27, the court shall order the measures
29 required by G.S. 64-33(a)(1) and (2), and G.S. 64-33A, and shall also order the appropriate
30 agencies to suspend affected licenses for a period of 90 business days.

31 **"§ 64-34A Consequences of subsequent violations.**

32 For a third violation of G.S. 64-26 or G.S. 64 27, the court shall order the measures required
33 by G.S. 64 33(a)(1) and (2), G.S. 64-33A, and G.S. 64-34, and shall also order the appropriate
34 agencies to permanently revoke all affected licenses. Upon receipt of a court order issued
35 pursuant to this section, and notwithstanding any other provision of law, the appropriate
36 agencies shall immediately revoke the licenses. The court shall send a copy of the court's order
37 to the Attorney General, and the Attorney General shall maintain the copy pursuant to
38 G.S. 64-35.

39 **"§ 64-35. Attorney General to maintain copies of orders.**

40 The Attorney General shall maintain copies of court orders that are received pursuant to
41 G.S. 64-33 and G.S. 64-34 and shall maintain a database of the employers and business
42 locations that have a first violation of G.S. 64-26 or G.S. 64-27 and make the court orders
43 available on the Attorney General's Web site.

44 **"§ 64-36. Work authorization shall be verified through the federal government.**

45 (a) Verification by Attorney General or District Attorney. – When investigating a
46 complaint under this Article, the Attorney General or district attorney shall verify the work
47 authorization of the alleged unauthorized alien with the federal government pursuant to 8
48 U.S.C. § 1373(c). A State, county, or local official shall not attempt to independently make a
49 final determination of whether an alien is authorized to work in the United States.

50 (b) Verification by Court. – In considering whether an employee is an unauthorized
51 alien, the court shall consider only the federal government's determination issued pursuant to 8

1 U.S.C. § 1373(c). The court may take judicial notice of the federal government's determination
2 and may request the federal government to provide automated or testimonial verification
3 pursuant to 8 U.S.C. § 1373(c).

4 **"§ 64-37. Defenses.**

5 (a) E-Verify Use. – For purposes of this Article, proof that an employee's work
6 authorization was verified through E-Verify creates a rebuttable presumption that an employer
7 did not violate G.S. 64-26 or G.S. 64-27.

8 (b) Compliance With Federal Law. – For purposes of this Article, an employer who
9 establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b)
10 establishes an affirmative defense to a violation of G.S. 64-27. For purposes of this subsection,
11 an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b)
12 notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the
13 requirements, so long as there is a good faith attempt to comply with the requirements.

14 **"§ 64-38. Article does not require action that is contrary to federal or State law.**

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

17 **"§ 64-39. Discharge of authorized employee while employer simultaneously employs an**
18 **unauthorized alien is an unfair trade practice.**

19 The discharge or termination of any employee who is not an unauthorized alien, who, on
20 the date of the discharge, employed an unauthorized alien, shall be an unfair trade practice as
21 defined in G.S. 75-1.1, and the discharged or terminated employee shall have a right of action
22 under G.S. 75-16."

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

24 "(f) Each State agency, department, institution, university, community college, and local
25 education agency shall verify, in accordance with the Basic Pilot Program administered by the
26 United States Department of Homeland Security pursuant to 8 U.S.C. § 1401, et seq, each
27 individual's legal status or authorization to work in the United States after hiring the individual
28 as an employee to work in the United States; register and participate in E-Verify to verify the
29 work authorization of new employees. As used in this section, the term 'E-Verify' means the
30 federal E-Verify program operated by the United States Department of Homeland Security and
31 other federal agencies, or any successor or equivalent program used to verify the work
32 authorization of newly hired employees pursuant to federal law."

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

34 **"§ 153A-449. Contracts with private entities; contractors must use E-Verify.**

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

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

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

41 **"§ 160A-20.1. Contracts with private entities; contractors must use E-Verify.**

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

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

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

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

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

3 **"§ 143-48.5. Contractors must use E-Verify.**

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

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

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

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

11 **"§ 153A-99.1. County verification of employee work authorization.**

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

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

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

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

22 **"§ 160A-169.1. Municipality verification of employee work authorization.**

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

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

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

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

- 34 (1) January 1, 2012, for companies that employ 500 or more employees in the
35 State as of that date.
- 36 (2) July 1, 2012, for companies that employ 100 or more employees but fewer
37 than 500 employees in the State as of that date.
- 38 (3) January 1, 2013, for companies that employ 25 or more employees but fewer
39 than 100 employees in the State.