



HOUSE BILL 318: Protect North Carolina Workers Act

2015-2016 General Assembly

Committee:	House Judiciary IV	Date:	April 23, 2015
Introduced by:	Reps. Cleveland, Millis, Whitmire, Conrad	Prepared by:	Kara McCraw
Analysis of:	Third Edition		Committee Counsel

SUMMARY: *The 2nd Edition of HB 318 makes various changes to the law related to verification of work authorization for certain employees, including:*

- *Amending the law to increase the number of employers who are required to participate in the federal E-Verify Program.*
- *Repealing the exemption for temporary employees.*
- *Excluding farm workers from the definition of employee under Article 2 of Chapter 64.*
- *Requiring E-Verify compliance in certain governmental contracts.*
- *Providing that consulate or embassy documents may not be used to determine identification or residency for law enforcement purposes.*

CURRENT LAW: Under Article 2 of Chapter 64, employers of 25 or more employees are required to use the federal E-Verify system to verify that their employees are authorized to work in the United States. A copy of the e-verification must be maintained by the employer while the employee is employed and for one year thereafter. The Commissioner of Labor is authorized to conduct investigations and enforce the law. Failure to comply with the law can result in civil penalties. The Commissioner is also required to notify the US Immigration and Customs Enforcement agency if the Commissioner has reason to believe any unverified employee is an unauthorized alien.

The law also requires municipalities and counties to use the E-Verify program for all their new employees and for their contractors. S.L. 2014-119 amended the law prohibiting municipalities and counties from entering contracts unless the contractor complies with the State E-Verify requirement. The amendment limited the prohibition to contracts subject to the public contracting law.

BILL ANALYSIS:

Section 1 of House Bill 318 amends the definition section of Article 2 of Chapter 64 (the State E-verify requirement). The section amends the definition of "employee" to remove the exclusion for employees whose term of employment is less than nine months in a calendar year and adds a provision excluding farm workers, independent contractors, or individuals who provide domestic service in a private home on a sporadic, irregular, or intermittent basis.

The section also amends the definition of "employer" to reduce the number of employees an employer must have to be subject to the law. Currently, the law applies to employers of 25 or more employees. This section reduces the number of employees to 5 or more.

The section also adds definitions for the terms "farm worker" and "independent contractor".

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House Bill 318

Page 2

Section 2(a) of the bill adds a new section to the Public Contracts law. The new provision prohibits any board or governing body of the State, any State institution, or any political subdivision of the State from entering a contract unless the contractor and any subcontractors comply with the State E-verify requirements. The government entities can satisfy this requirement by including in the contract a term requiring the contractor and any subcontractors to comply with the State E-verify requirements. The provision specifically exempts from its application contracts for travel expenses, solely for the purchase of goods, apparatus, supplies, materials, or equipment, contracts with other units of government, and so-called "piggy-back" contracts. These are contracts for purchases established by the State or federal government in which the contractor is willing to extend to a political subdivision the same or more favorable prices, terms, and conditions.

Sections 2(b) and (c) repeal the provisions prohibiting municipalities and counties from entering contracts unless the contractor complies with the State E-verify requirement since they are now covered by the new section.

Section 3 amends the Local Government Finance act with regard to penalties imposed on finance officers who give a false certificate to a contract or agreement. Under current law, the finance officer is liable for any funds illegally committed or disbursed. This section adds a provision that inclusion of a contract term requiring the contractor to comply with the State E-verify requirements is deemed compliance with the requirement.

Sections 4 through 10 make conforming changes to various sections of Article 2 of Chapter 64.

Section 11 adds a new section to Article 2 of Chapter 64 which establishes the consequences for violation of the new governmental contract E-verify requirement. The Commissioner of Labor is directed to notify any governmental entity found in violation of the statute and the Department of Labor must maintain a list of governmental entities so notified and publish the list on its website.

Section 12 adds a new Article 18 to Chapter 15A entitled "Identification Documents". This provision makes the use of certain documents unacceptable by any government official for purposes of determining a person's identity or residency. The documents are a matricula consular or other similar document other than a valid passport, and an identity document created by any person, organization, county, city, or other local authority except where expressly authorized by the General Assembly.

Sections 13, 14 and 15 make conforming changes to the motor vehicle law, the insurance law, and the medical assistance law to remove use of consular documents from the list of documents that can be used to verify State residency.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to contracts entered into on or after that date.

O. Walker Reagan, Director of the Research Division, and Karen Cochrane-Brown, Staff Attorney, substantially contributed to this summary.