

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1527

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1527
2/6/2023

Related to illegal aliens and private employment; and to provide a penalty.

Chairman Louser called to order 9:01 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Dakane, Johnson, Kasper, Koppelman, Schauer, Thomas, Tveit, Wagner, Warrey.

Members absent: Representatives Christy, Ruby.

Discussion Topics:

- Lawful Presence
- Private Employers
- Federal Law

In favor:

Representative Matt Heilman, District 7, Bismarck, #19230

Opposed:

Arik Spencer, Greater North Dakota Chamber, #19332
Mike Rud, ND Petroleum Marketers, and the Retail Association (no written testimony)

Neutral:

Nathan Svihovec, Commissioner, ND Labor, and Human Rights, #19213, #19333

Additional written testimony:

Shari Rendall, Federation for American Immigration Reform (FAIR), #18875
Ethan Harsell, Grand Forks citizen, #19219

Chairman Louser adjourned the meeting 9:57 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1527
2/6/2023

Related to illegal aliens and private employment; and to provide a penalty.

Chairman Louser called to order 3:08 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Dakane, Johnson, Koppelman, Schauer, Thomas, Tveit, Wagner, Warrey.

Members absent: Representatives Kasper

Discussion Topics:

- Committee action

Representative Wagner moved do not pass.

Representative Boschee seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	A
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Moved 13-0-1 Representative Dakane to carry the bill.

Chairman Louser adjourned the meeting 3:12 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1527: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1527 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1527

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FAIR is a nonprofit public interest organization working to end illegal immigration and to set levels of legal immigration that are consistent with the national interest.



February 2, 2023

The Honorable Scott Louser, Chair
 House Industry, Business, and Labor Committee
 North Dakota House of Representatives
 State Capitol, Room 327C
 600 East Boulevard Ave.
 Bismarck, ND 58505

Dear Chairman Louser and other distinguished members of the Committee:

My name is Shari Rendall and I am the Director of State and Local Engagement at the Federation for American Immigration Reform (FAIR). FAIR is a non-profit, non-partisan organization of concerned individuals who believe that our immigration laws must be reformed to serve our nation’s interests.

FAIR advocates for immigration policies that reduce the harmful impact of illegal immigration on national security, public safety, the economy, jobs, education, healthcare and the environment.

Founded in 1979, FAIR has three million members and supporters nationwide including 1,330 in North Dakota. On behalf of our members and supporters, I am writing to express FAIR’s strong support for House Bill (HB) 1527 which would require employers, public and private, to use E-Verify to ensure a legal workforce.

FAIR has long supported requiring employers to use the federally-maintained free E-Verify program. Federal law already prohibits the employment of unauthorized workers; E-Verify simply provides a free, fast, and easy way to comply. Requiring employers to use E-Verify is smart public policy because it protects employers from violating the law and costs nothing.

FAIR supports HB 1527 for the following reasons:

E-Verify will benefit, not cost, North Dakota’s economy

Those opposing E-Verify claim it will cause an economic collapse. However, that is a false narrative since the economies have not collapsed in those states that have enacted E-Verify. On the contrary, FAIR’s research shows that in every state, except Tennessee, which enacted or expanded its use of E-Verify after the 2008 financial crises,



unemployment rates dropped even when the national unemployment rate increased. The bottom line is that E-Verify is an excellent way for North Dakota businesses to protect the labor market from artificial wage depression and ensure a level playing field among companies competing in the same markets.

E-Verify is completely free

E-Verify is operated and maintained by the federal government, in a partnership between the Department of Homeland Security and the Social Security Administration. It costs nothing for an employer or prospective employee to use. Likewise, it costs nothing to the states that require it.

E-Verify is highly effective, especially compared to the status quo

In the most recent audit of the E-Verify system by Verification Information System (VIS) Transaction Data (current through Quarter Four of Fiscal Year 2022), 98.34 percent of all employees entered into the E-Verify program were automatically confirmed as work authorized instantaneously (within three to five seconds) or within 24 hours, requiring no additional actions by either the employee or employer. Less than two percent of employees were identified as system mismatches. Of the initial system mismatches, only 0.12 percent were later confirmed as work authorized. Based on cost, convenience and reduction of potential liability, the only reason for an employer to prefer the paper I-9 employment verification process over the electronic E-Verify system would appear to be a willful desire to turn a blind eye to potentially fraudulent identity and work-authorization documents.

E-Verify helps protect everyone from identity theft

E-Verify is a shield against the widespread dangers of identity theft because a prospective employee's full name, Social Security Number, date of birth, gender and photo ID must all match. Almost all employment-related identity theft is SSN-only fraud: according to a Social Security official, "[n]inety-eight percent of Social Security-related ID theft cases involve people who use their own names but invent or steal their numbers."

E-Verify is well-liked by employers

In addition to its effectiveness in verifying work authorization, E-Verify is rated very highly and positively by employers who use it. In a 2021 survey of customer satisfaction by CFI Group, E-Verify

received an average score of 89 out of 100 from all existing users, and 87 from new enrollees.

E-Verify is strongly supported by the public

In an October 2021 nationwide poll by Rasmussen Reports, 66% of likely voters indicated they supported making E-Verify mandatory for all employers.

E-Verify is constitutional: it has been upheld by the courts

In 2011, the U.S. Supreme Court in *Chamber of Commerce v. Whiting*, 563 U.S. 582, upheld Arizona legislation that required all employers, public and private, to use E-Verify. In *Whiting*, the Court determined that the Legal Arizona Workers Act was valid and not federally preempted because it mirrored federal law. Not only does HB 1527 adopt and support federal law, it contains fewer requirements than the language that already survived constitutional challenge in *Whiting*.

E-Verify is already required by nearly half the states: it is not a risky experiment with dangerous or unknown results

Twenty-one states have enacted laws that require all or some employers to use E-Verify to confirm the work authorization of newly-hired employees and/or contractors: Alabama, Arizona, Colorado, Florida, Georgia, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia and West Virginia. North Dakota can rest assured that other states' experiences with E-Verify provide tested real-world proof that it works.

In short, E-Verify is beneficial, free, effective, liked, constitutional and proven. FAIR supports HB 1527 because E-Verify will protect North Dakota workers from unfair competition and illegal alien laborers from unscrupulous exploitation.

Sincerely,

A handwritten signature in black ink that reads "Shari Rendall". The signature is written in a cursive, flowing style.

Shari Rendall

68th Legislative Assembly
Regular Session (2023)

H.B. 1527

House Industry, Business, and Labor

Rep. Scott Louser, Chairman
Rep. Mitch Ostlie, Vice Chairman

Testimony of Nathan Svihovec

Commissioner of Labor
N.D. Department of Labor and Human Rights

NEUTRAL

February 6, 2023

I. Introductory Summary

Chairman Louser, Vice Chairman Ostlie, and members of the House Industry, Business, and Labor Committee, my name is Nathan Svihovec and I was appointed as the North Dakota Department of Labor and Human Rights Commissioner beginning December 2022. I am a licensed attorney in the State and prior to my appointment, primarily practiced in labor and employment law as well as other civil litigation areas. I have been fortunate to formerly represent the Department as an Assistant Attorney General and to represent private businesses and individuals before the Department while I was in private practice.

Chapter (Ch.) 34-05 of the North Dakota Century Code (N.D.C.C.) created the North Dakota Department of Labor and Human Rights and prescribes the powers and duties of the Commissioner of Labor (Labor Commissioner). The Department's statutory duties can be most concisely summarized as ensuring citizens can live, work, and prosper in North Dakota. It is my deeply held belief that the mission of the Department is an essential service to the public.

II. Points for Consideration by Page and Line Number

Subsection 3 of § 34-16-01 (Page 1, Lines 11-17): This subsection excludes "a professional license" from the definition of "license." I presume that phrase encompasses licenses issued pursuant to: (1) N.D.C.C. Title 43 (occupational licensing boards); (2) N.D.C.C. ch. 15.1-13 (Education Standards and Practices Board), and (3) N.D.C.C. ch. 27-11 (State Board of Law Examiners).

Subsection 2 of § 34-16-02 (Page 2, Lines 14-17): The bill discusses the requirements of the U.S. Citizenship and Immigration Services Form I-9 Employment Eligibility Verification.

The Department does not currently regulate or administer any services related to employment eligibility verifications.

Subsection 3 of § 34-16-02 (Page 2, Lines 20-22): The bill requires the Department to provide “technical advice” on a federal government website over which the Department has no authority or control. It is also unclear to what extent the Department is required to give advice.

Subsection 5 of § 34-16-02 (Pages 2-3, Lines 30-1): The bill requires the Department to “send written notice” to all N.D. employers. Currently, it is estimated there are over 100,000 employers in the State. Accordingly, compliance with this provision would cost an estimated \$75,000 just in paper, ink, and postage. It is likely compliance with this provision would require a significant amount of time on the Department, which would pull staff from our core duties. Additionally, it is unclear if the bill requires the Department to issue written notice to every newly registered employer in perpetuity. The second primary requirement under this section would merely require the Department to publish notice on its website, which is significantly more efficient and less costly to achieve.

Subsection 1 of § 34-16-05 (Page 3, Lines 17-24): It appears anyone can submit a complaint. The absence of some limitation on who may file a complaint could result in an unpredictable number of complaints filed. This subsection also requires the Department to perform verification duties with the federal government. It is unclear the duration of these verifications and the extent of impact on the Department.

Subsection 4 of § 34-16-05 (Pages 4-7, Lines 11-2): Outlines the disciplinary levels depending on the number of violations committed and the process to obtain a provisional

license. Nothing in the bill would require any update to the Secretary of State's statuses of whether a business is currently in good standing if an employer's license under this bill was suspended or revoked.

Subdivision (b) of § 34-16-05(4) (Page 6, Lines 17-27): Prohibits an employer from seeking a license for five years. While there are numerous Constitutional issues at play in the disciplinary actions, the Department does not have a position on the levels of discipline imposed.

§ 34-16-11 (Page 8, Lines 26-30): This requirement could significantly impact the Department depending on the extent of the auditing program and resulting number of violations. Currently, our investigators are stationed at various cities in the State and cost to travel to random employer locations would be significant. Thus, it is unlikely the Department would develop administrative rules requiring the physical inspection of businesses. Rather, any administrative rules implementing the auditing program would likely consist of document review. Such a review may not result in the findings intended by this bill and, consequently, would likely be a poor use of funds.

In addition, the Secretary of State's Office ("SOS") has expressed concerns related to the language within the bill. As I understand, the SOS's current statutory authority, processes, and automated system would be rendered inconsistent with the effects of this bill. To accomplish this, the SOS has estimated it would cost over \$100,000 to allow for the necessary changes to its systems. The SOS also only places current business licenses in "not good standing" for failure to file an annual report or maintain a registered agent but does not proactively prevent a business from operating or penalize it for noncompliance. Indeed,

although the SOS can administratively dissolve an entity, the current language expressly prohibits such an action for any violations.

The bill mirrors a statute in place in South Carolina since 2008. It is difficult to estimate what impact, if any, this bill would have. There is certainly a potential that several employers are currently employing undocumented aliens. There is equally a potential that North Dakota employers are currently complying with immigration laws.

III. Suggested Amendments

Please see the attached suggested revisions.

IV. Fiscal Impact

It is estimated up to two FTEs may be needed to accomplish the duties of H.B. 1527, depending on the number of claims filed. Each FTE is anticipated to cost approximately \$87,500 in salary and benefits for a total of \$175,000 per year. The initial mailing of over 100,000 notices will cost an estimated \$75,000 in supplies and postage. Depending on the ongoing requirements of H.B. 1527, additional costs to mail notice to each newly registered business will carry additional costs in supplies and postage. This estimate is conservative given the difficulty anticipating and calculating the extent of the problem.

The Secretary of State's Office has indicate a minimum cost of \$100,000 to ensure its current systems and processes are consistent with the effects of this bill.

V. Conclusion

Thank you for your consideration and for your service to North Dakota.

Dear Chairman Louser and Committee Members,

I am writing to express my strong support for House Bill NO. 1527. As a concerned citizen and taxpayer, I believe this bill is crucial for promoting a fair and lawful employment environment in North Dakota. The problem of illegal immigration has long been a problem in our state, particularly in industries such as beekeeping and farming where there is a high demand for cheap labor.

Beekeepers and farmers in North Dakota often rely on seasonal workers to assist with the many tasks involved in producing honey and crops. Unfortunately, many of these workers are not legally authorized to work in the United States, leaving them vulnerable to exploitation and abuse by their employers. This leads to poor working conditions, low wages, and a lack of job security. Furthermore, the use of illegal labor creates an uneven playing field for law-abiding businesses within that industry, as those who employ unauthorized workers will have an advantage in terms of cost and competitiveness.

The provisions of this bill will help to address these problems by requiring that all workers in North Dakota, are employed legally. The inclusion of penalties for those who knowingly hire illegal workers will serve as a deterrent and help to enforce our immigration policies.

In conclusion, I strongly urge you to support this bill and take the necessary steps to ensure that all workers in North Dakota, including those in the beekeeping and farming industries, are employed legally. This will promote fairness, protect workers and employers, and ensure that our immigration policies are properly enforced. Supporting the rule of law is important for the well-being of our communities and the success of our state.

Sincerely,

Ethan Harsell

Grand Forks, North Dakota



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Matt Heilman

District 7
5501 Flatrock Drive
Bismarck, ND 58503-8929

mheilman@ndlegis.gov

COMMITTEES:
Education
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February 6th, 2023

Chairman Louser and Members of the Industry Business and Labor Committee,

I am Representative Matt Heilman from district seven in Bismarck. I come before you today on behalf of my bill, House Bill 1527. This piece of legislation will ensure all employers in the state are hiring people who have lawful presence and are authorized to work in our country. The bill will do this by mandating all employers, public and private, to use the federal program E-Verify. I will go through the purpose of me bringing this bill, reasons to support this legislation, the backstory of E-Verify, and explaining what E-Verify entails.

I brought this bill for a number of reasons. We all know the southern border is in terrible condition, but you may not hear much about the northern border. United States Customs and Border Protection (USSCP) reported that in December of 2022 there were over 250,000 encounters which was higher than any other month in 2020, 2021, and 2022.

The Daily Mail reported on January 29th, 2023 of a 743% spike increase in illegal encounters and apprehensions on the northern border due to "easier entry than Mexico." This spike increase is compared to the period of the prior year in the Grand Forks sector where there were 90 apprehensions in three months since October 1st of 2022. That is more than the whole fiscal year of October 1st, 2021 to September 30th of 2022.

Here are some 2017 statistics from Federation for American Immigration Reform (FAIR). An estimated more than 6,000 unlawful people live in North Dakota, those people have over 2,000 children, more than 1,000 of those go to local schools. Taxpayers spent \$13,600,000 supporting their education and \$2,500,000 on police and legal corrections. Then adding healthcare, public assistance, general government service expenses, North Dakota taxpayers felt a fiscal burden of \$36,500,000.

There has been bipartisan support for E-Verify from many people across the political spectrum. Former President Obama asked for \$132,000,000 in his 2012 fiscal year budget for E-Verify. Former Democratic Governor of Arizona Janet Napolitano commented on E-Verify "Some of the arguments that are made about how it works or does not work don't carry much water with me. I've already used it for several years. It works." In 2009 Governor Napolitano signed E-Verify into law mandating it for all employers. Governor Napolitano also said "E-Verify is a smart, simple, and effective tool that allows us to work with employers to help them maintain a legal workforce."

January 31st of this year, U.S. Senator Chuck Grassley introduced legislation mandating E-Verify for all employers. This bill has been cosponsored by Senators Tommy Tuberville (R-Ala.), Mike Lee (R-Utah), Tom Cotton (R-Ark.), Ted Cruz (R-Texas), Cindy Hyde-Smith (R-Miss.), John Boozman (R-Ark.), James Lankford (R-Okla.), Shelley Moore Capito (R-W.Va.), John Thune (R-S.D.) and Joni Ernst (R-Iowa). There is no question there is support from both parties on this issue.

In the Iowa state legislature, Senator Julian Garrett is introducing E-Verify along with 16 total cosponsors. As of January 1, 2021 E-Verify became mandatory in Florida. To date the following states require E-Verify for some or all employers: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia and West Virginia. 22 of the 50 states require it on some level.

E-Verify summarizes it well by saying “E-Verify, authorized by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), is a web-based system through which employers electronically confirm the employment eligibility of their employees.” This is a totally free program for employers to use as well.

In the E-Verify process, employers create cases based on information taken from an employee’s Form I-9, Employment Eligibility Verification. E-Verify then electronically compares that information to records available to the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA). The employer usually receives a response within a few seconds either confirming the employee’s employment eligibility or indicating that the employee needs to take further action to complete the case. E-Verify is administered by SSA and U.S. Citizenship and Immigration Services (USCIS). USCIS facilitates compliance with U.S. immigration law by providing E-Verify program support, user support, training and outreach, and developing innovative technological solutions in employment eligibility verification.”

In 2021 E-Verify reported that 998,000 employers use the program. In 2022, there were 48,042,413 cases in the E-Verify system. 98.34% of those were authorized to work either instantly or within 24 hours. 1.61% of those cases were initially system mismatches and 0.12% of those initial system mismatches were later confirmed.

I ran the numbers. E-Verify has a 98.37% rate of authorizing cases sent in. U.S. Bureau of Labor Statistics says roughly our private sector gains about 20,000-25,000 jobs every three months. 98.37% of 25,000 is 24,593 people confirmed within seconds. That leaves 407 people not authorized to work instantly (1.63% of 25,000). 30 people (.12% of 25,000) will later be authorized within 24 hours to work which leaves us at 377 (1.51% of 25,000)

Now we are at 377 (1.51% of 25,000) who are not authorized to work. Of the 377 who are not authorized, 162 (.43% of 25,000) will select “not contest” on the E-Verify website, which leaves us at 215 (.86% of 25,000) Of the 215 (.86% of 25,000), .011% (2 cases) will contest the mismatch and fail. For the ones leftover, the employer will have it “self determined.” Which could mean they took no action on the E-Verify website after they were not authorized initially or within 24 hours.

Summarized, running these numbers only two in a three month period based on 25,000 would contest the results. In theory, 377 of the 25,000 could all be unable to work in the country. In a total year, 1508 unlawful people could potentially be stopped from being employed in our state.

Opponents of E-Verify will say that there is no need for E-Verify because over 98% of the people entered into the system pass within 10 seconds. This is not a credible argument because E-Verify serves as a deterrent for employers to would potentially employ unlawful individuals. An employer is not going to even consider hiring someone who is unlawful knowing full well they will have to use E-Verify. A good analogy would be “How many terrorist attacks were prevented because of TSA and generally tougher security after 9/11?” There is no true number that I can give the committee because it is not possible. However, I can assure that this program will prevent and deter employers from employing unlawful individuals.

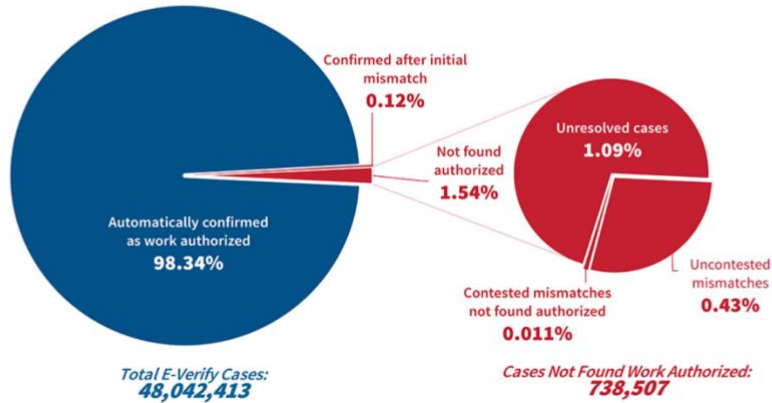
Other opponents of this bill will complain about the fiscal note attached to the bill. I question how necessary it is to have two new FTE’s from the data provided previously. To quote the fiscal note: “There is also a potential that very few complaints or violations will occur.” Seeing this on the fiscal note, it may not be necessary for two new FTE’s. The Labor Commissioner also has provided amendments where the FTE’s might not be needed. I completely support the amendments from the Labor Commissioner.

The other part of the fiscal note states there is about \$75,000 for mailing notices to employers. The Labor Commissioner has provided an amendment to the bill to eliminate this cost. I also completely support this amendment and all amendments provided by the Labor Commissioner.

As you can see, there is a problem on our northern border with this issue. There has been bipartisan support for years on the program. E-Verify is proven to be effective and a way to protect our own citizens. It is a simple, trusted, and an easy program that will benefit our state. We must take a proactive approach to this issue and do what we can. Chairman Louser and members of the committee, I respectfully ask for a due pass recommendation and I will gladly stand for any questions.

How to use E-Verify: <https://www.youtube.com/watch?v=NyqZOegUGEs>

E-Verify Performance



The statistics in the above chart report E-Verify case processing results through Quarter 4 of Fiscal Year 2022. All figures are expressed as a percentage of the total number of cases submitted and percentages are rounded. Total E-Verify Cases: 48,042,413. Cases Not Found Work Authorized: 524,693.

Most employees are automatically confirmed as work authorized.

- 98.34 percent of employees are automatically confirmed as authorized to work ("work authorized") either instantly or within 24 hours, requiring no employee or employer action.
- 1.61 percent of employees receive initial system mismatches.

Of the 1.66 % of employees who receive initial system mismatches:

- 0.12 percent are later confirmed as work authorized after contesting and resolving the mismatch.
- 1.54 percent are not found work authorized.

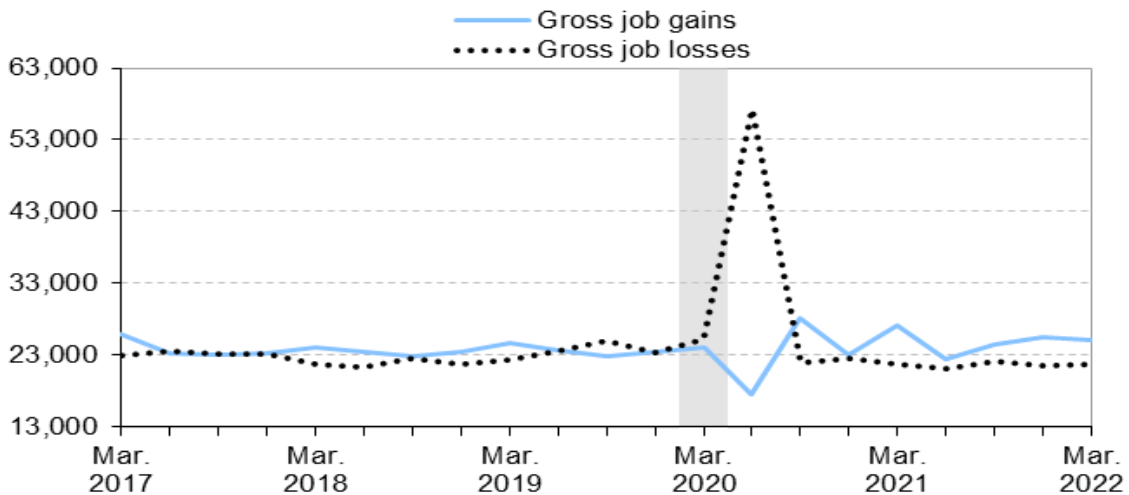
Of the 1.54% of employees not found to be work authorized:

- 0.43 percent do not contest the mismatch either because they do not choose to or are unaware of the opportunity to contest and as a result are not found work authorized.
- 0.011 percent contest the mismatch and are not found work authorized.
- 1.09 percent are unresolved either because the employer closed the case as "self-terminated" or because the case was awaiting further action by either the employer or employee at the end of FY22 Q4.

Percentage may not appear to sum based on rounding.

Data Source: Verification Information System (VIS) Transaction Data.

Chart 1. Private-sector gross job gains and losses in North Dakota, March 2017–March 2022, seasonally adjusted



Source: U.S. Bureau of Labor Statistics.

Note: Shaded area represents National Bureau of Economic Research (NBER) defined recession period.



Employment Eligibility Verification
Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-9
 OMB No. 1615-0047
 Expires 10/31/2022

► **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number [][] - [][] - [][][][]		Employee's E-mail Address		Employee's Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States		
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions)		
<input type="checkbox"/> 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____		
<input type="checkbox"/> 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____ Some aliens may write "N/A" in the expiration date field. (See instructions)	QR Code - Section 1 Do Not Write In This Space	
Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.		
1. Alien Registration Number/USCIS Number: _____ OR		
2. Form I-94 Admission Number: _____ OR		
3. Foreign Passport Number: _____ Country of Issuance: _____		

Signature of Employee	Today's Date (mm/dd/yyyy)
-----------------------	---------------------------

Preparer and/or Translator Certification (check one):

I did not use a preparer or translator. A preparer(s) and/or translator(s) assisted the employee in completing Section 1.
 (Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Today's Date (mm/dd/yyyy)	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State ZIP Code



Employer Completes Next Page





Employment Eligibility Verification
Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-9
 OMB No. 1615-0047
 Expires 10/31/2022

Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

Employee Info from Section 1	Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
-------------------------------------	-------------------------	-------------------------	------	--------------------------------

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date (if any) (mm/dd/yyyy)		Expiration Date (if any) (mm/dd/yyyy)		Expiration Date (if any) (mm/dd/yyyy)
Document Title		Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space
Issuing Authority				
Document Number				
Expiration Date (if any) (mm/dd/yyyy)				
Document Title				
Issuing Authority				
Document Number				
Expiration Date (if any) (mm/dd/yyyy)				

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions)

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Title of Employer or Authorized Representative		
Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer's Business or Organization Name		
Employer's Business or Organization Address (Street Number and Name)		City or Town	State	ZIP Code

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable)			B. Date of Rehire (if applicable)	
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)	

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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LISTS OF ACCEPTABLE DOCUMENTS
All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security
		8. Native American tribal document		
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Examples of many of these documents appear in the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.



GREATER NORTH DAKOTA CHAMBER
HB 1527
House Industry, Business, and Labor Committee
Chairman Scott Louser
February 6, 2023

Mr. Chairman and members of the Committee, my name is Arik Spencer with the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, representing small and large businesses, local chambers, and trade and industry associations across the state. We stand in **Opposition** to House Bill 1527.

Our members oppose regulatory changes and mandates that would increase business burdens and costs, and HB 1527 certainly would increase both costs and burdens on every private employer in North Dakota.

The problems with HB 1527 are numerous. First, HB 1527 is a large and expensive government expansion giving the Department of Labor sweeping authority over private employers by creating regulatory burdens. The Department of Labor would need more funding and staffing to provide licenses, conduct investigations, create rules, and have administrative proceedings. The Department of Labor would also provide advice on a federal immigration program for paperwork and technical aspects of the application.

HB 1527 requires the Labor Commissioner to investigate every complaint and has no discretion should frivolous claims against an employer be made. Also, there is no penalty for frivolous claims.

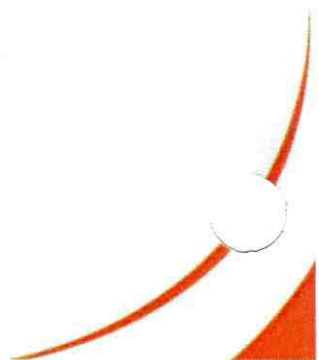
HB 1527 puts requirements on employers that could be contrary to what the federal government wants or requires. If federal law changes as it pertains to verifying the immigration status of an individual, an employer would be met with the dilemma of whether to follow federal or state law. As such, compliance with both federal and state law would be impossible. The state cannot order the federal government to accept paperwork or verify working status in a certain amount of time.

HB 1527 does not require any judicial action or review before the forced closure of a business, even temporarily. It makes the executive branch, in the form of the Department of Labor, judge, jury, and executioner. As a result, the state would almost certainly be subject to costly litigation to defend lawsuits. Because HB 1527 would deny owners the possession of their property, a business, in violation of the Due Process Clause through a general business license, it may be unconstitutional.

HB 1527 presents even further issues. A violation, even a minor one, such as failing to timely verify employment, could destroy businesses. Few employers can afford not to conduct business for several days or months. This will also cause litigation for employers. For example, if a contractor is suspended for 90 days while building a structure, there will almost certainly be litigation regarding the contract. Employees will be unemployed at this time, including any of the other employees who could legally work. This will cause increased unemployment costs for the state. Additionally, the current law could violate federal labor laws, as an employer cannot employ anyone during a suspension. If an employer does not conduct certain business aspects, like paying employees, it could be subject to state and federal labor law violations.

Employers are already required by federal law to verify immigration status in hiring new employees under penalty of perjury. The federal government has set out extensive requirements on how employers must comply with verification by filling out "Form I-9, Employment Eligibility Verification Form". Both employees and employers are responsible for completing their respective sections of Form I-9. On the form, an employee must attest to their employment authorization. Employees must also present their employer with acceptable documents as evidence of identity and employment authorization. The employer must examine these documents in a particular amount of time to determine authenticity and relation to the employee, then record the document information on the employee's Form I-9. Employers must retain Form I-9 for a certain time period and make it available for inspection by authorized government officers. Employers must also keep photocopies of the documents verifying authorization, with exceptions if the employer voluntarily participates in E-verify. Form I-9 is a U.S. Citizenship and Immigration Services ("USCIS") form. It is not filed, but it must be retained and available for inspection by U.S. Government officials.

HB 1527 is not needed in North Dakota and will present significant challenges to the state and private employers if enacted. I urge a "Do Not Pass" recommendation on HB 1527, and I'll stand for any questions.



23.1039.01000

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1527

Introduced by

Representative Heilman

1 A BILL for an Act to create and enact chapter 34-16 of the North Dakota Century Code, related
2 to illegal aliens and private employment; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 34-16 of the North Dakota Century Code is created and enacted as
5 follows:

6 **34-16-01. Definitions.**

7 As used in this chapter:

- 8 1. "Agency" means an agency, department, board, commission, or political subdivision
9 which issues licenses for the purposes of operating a business in the state.
- 10 2. "Commissioner" means the labor commissioner or the labor commissioner's designee.
- 11 3. "License" means an agency permit, certificate, approval, registration, charter, or
12 similar form of authorization required by law and which is issued by an agency for the
13 purpose of operating a business in the state. The term includes an employment
14 license, articles of organization, articles of incorporation, a certificate of partnership, a
15 partnership registration, a certificate to transact business, or similar forms of
16 authorization issued by the secretary of state. The term does not include a
17 professional license under N.D.C.C. Title 43, N.D.C.C. ch. 15.1-13, or N.D.C.C. ch 27-11.
- 18 4. "Political subdivision" includes counties, cities, townships, districts, authorities, and
19 other public corporations and entities.
- 20 5. "Private employer" means a person:
 - 21 a. That transacts business in the state which is required to have a license issued by
22 an agency and which employs one or more employees in the state;
 - 23 b. Carrying on any employment, and the legal representative of a deceased
24 individual or the receiver or trustee of any person carrying on employment; or

1 c. For which an individual performs a service or sells a good, of whatever nature, as
2 an employee.

3 6. "Unauthorized alien" means an unauthorized alien as defined by 8 U.S.C. section
4 1324a(h)(3).

5 **34-16-02. North Dakota employment license - Federal work authorization program -**
6 **Requirements for verification of new employees - Assistance to employers, contractors,**
7 **and subcontractors.**

- 8 1. A private employer in the state is imputed a North Dakota employment license, which
9 permits a private employer to employ an individual in the state. A private employer
10 may not employ an individual unless the private employer's North Dakota employment
11 license and any other applicable licenses are in effect and are not suspended or
12 revoked. A private employer's employment license remains in effect if the private
13 employer complies with this chapter.
- 14 2. A private employer required by federal law to complete and maintain federal
15 employment eligibility verification forms or documents shall register and participate in
16 the e-verify federal work authorization program to verify the work authorization of
17 every new employee within three business days after employing a new employee. A
18 private employer that does not comply with the requirements of this subsection
19 violates the private employer's license.
- 20 3. The department of labor and human rights shall ~~provide a private employer with~~
21 ~~technical advice and electronic access to~~ publish on its website the link to the e-verify
22 federal work authorization
23 program's website for the sole purpose of registering and participating in the program.
- 24 4. A private employer may employ provisionally a new employee until the new
25 employee's work authorization has been verified pursuant to this section. A private
26 employer shall submit a new employee's name and information for verification even if
27 the new employee's employment is terminated less than three business days after
28 becoming employed. If a new employee's work authorization is not verified by the
29 federal work authorization program, a private employer may not employ, continue to
30 employ, or reemploy the new employee.
- 31 5. The commissioner shall ~~send written notice of the requirements of this section to all~~
employers, and shall publish the information contained in the notice
requirements of this
section on the

1 commissioner's website. This section does not create a legal requirement that any
2 private employer receive actual notice of the requirements of this chapter through
3 written notice from the commissioner, nor create a legal defense for failure to receive
4 notice.

5 6. If a private employer is a contractor, the private employer shall maintain the contact
6 phone number of each subcontractor and sub-subcontractor performing services for
7 the private employer. The private employer shall provide the contact phone number to
8 the commissioner pursuant to an audit or investigation within seventy-two hours of the
9 commissioner's request.

10 **34-16-03. Employment of unauthorized alien.**

11 A private employer that knowingly or intentionally employs an unauthorized alien violates
12 the private employer's licenses.

13 **34-16-04. Presumption of compliance.**

14 A private employer that in good faith verifies the immigration status of a new employee
15 under section 34-16-02 is presumed to have complied with sections 34-16-02 and 34-16-03.

16 **34-16-05. Violations - Investigations - Suspension and revocation of license.**

17 1. Upon receipt of a written and signed complaint, signed under oath and penalty of
18 perjury, against a private employer, or upon an
19 investigation initiated by the commissioner for good cause, if the commissioner finds
20 reasonable grounds exist that a private employer violated the provisions of section
21 34-16-02 or 34-16-03, the commissioner shall institute an investigation of the alleged
22 violation. The commissioner shall verify the work authorization status of the alleged
23 unauthorized alien with the federal government pursuant to 8 U.S.C. section 1373(c).
24 A state, county, or other local official may not attempt to independently determine if an
25 alien is authorized to work in the United States.

26 2. If, after completing the investigation, and after reviewing any information or evidence
27 submitted by the private employer demonstrating compliance with this chapter, the
28 commissioner determines that substantial evidence exists to support a finding the
29 private employer has committed a violation of section 34-16-02 or 34-16-03, the
30 commissioner shall:

31 a. Notify the United States immigration and customs enforcement of suspected
unauthorized aliens employed by the private employer;

- 1 b. Notify state and local law enforcement agencies responsible for enforcing state
2 immigration laws of the employment of suspected unauthorized aliens by the
3 employer; and
- 4 c. Take appropriate action in accordance with subsection 4.
- 5 3. The commissioner may not bring an action against a private employer for any
6 employee who has been employed for three business days or fewer at the time of the
7 commissioner's inspection or random audit. A second occurrence involving a violation
8 of this section must be based only on an employee who is employed by the private
9 employer after a first action has been brought for a violation of section 34-16-02 or
10 34-16-03.
- 11 4. a. Upon a finding of an occurrence involving a violation after an investigation
12 pursuant to subsection 1, or after a random audit, in which the commissioner
13 considered all information or evidence gathered by the commissioner and any
14 information or evidence submitted by the private employer demonstrating
15 compliance with this chapter:
- 16 (1) For a first occurrence involving a violation of section 34-16-02, the private
17 employer, upon notification by the commissioner of a violation of section
18 34-16-02, immediately shall comply with the provisions of section 34-16-02,
19 and the private employer must be placed on probation for one year, during
20 which time the private employer shall submit quarterly reports to the
21 commissioner demonstrating compliance with section 34-16-02. A
22 subsequent occurrence involving a violation of section 34-16-02 by the
23 private employer results in the suspension of the private employer's licenses
24 for at least ten days but not more than thirty days by the commissioner,
25 except, if a private employer has not committed a violation of section
26 34-16-02 within the previous three years, a subsequent occurrence is
27 treated as a first occurrence. If a private employer has ever committed a
28 violation of section 34-16-03, the private employer's license must be
29 suspended for at least ten days but not more than thirty days for any
30 violation or subsequent occurrence involving a violation of section 34-16-02.
31 The commissioner shall verify the work authorization status of the

1 employees with the federal government pursuant to 8 U.S.C. section
2 1373(c) and notify the private employer of the results. The private employer
3 immediately shall terminate an employee whose work authorization was not
4 verified upon being notified by the commissioner. The commissioner shall
5 notify federal, state, and local law enforcement officials of any suspected
6 unauthorized aliens employed by the private employer.

7 (2) For a first occurrence involving a violation of section 34-16-03, the private
8 employer's license must be suspended and remain suspended for at least
9 ten days but not more than thirty days. During the period of suspension, the
10 private employer may not engage in business, be open to the public, employ
11 an employee, or otherwise operate. After the period of suspension, the
12 private employer's license must be reinstated, permitting the private
13 employer to engage in business and to employ an employee, if the private
14 employer:

- 15 (a) Demonstrates the private employer has terminated the unauthorized
16 alien; and
17 (b) Pays a reinstatement fee equal to the cost of investigating and
18 enforcing the matter, or one thousand dollars, whichever is less.

19 (3) For a second occurrence involving a violation of section 34-16-03, the
20 private employer's license must be suspended, and must remain suspended
21 for at least thirty days but not more than sixty days. During the period of
22 suspension, the private employer may not engage in business, be open to
23 the public, employ an employee, or otherwise operate. After the period of
24 suspension, the private employer's licenses must be reinstated, permitting
25 the private employer to engage in business, be open to the public, employ
26 an employee, and otherwise operate, if the private employer:

- 27 (a) Demonstrates the private employer has terminated the employment of
28 the unauthorized alien; and
29 (b) Pays a reinstatement fee equal to the cost of investigating and
30 enforcing the matter, or one thousand dollars, whichever is less.

- 1 (4) For a third or subsequent occurrence involving a violation of section
2 34-16-03, the private employer's license must be revoked, and the private
3 employer may not engage in business, be open to the public, employ an
4 employee, or otherwise operate. For a third occurrence only, after ninety
5 days, a private employer may petition the commissioner for a provisional
6 license. A provisional license permits a private employer to engage in
7 business, be open to the public, employ an employee, and otherwise
8 operate. The commissioner may grant the private employer permission to
9 apply for a provisional license if the private employer:
- 10 (a) Agrees to be on probation for three years, during which time the
11 private employer shall submit quarterly reports to the commissioner
12 demonstrating compliance with sections 34-16-02 and 34-16-03;
- 13 (b) Demonstrates the private employer has terminated the unauthorized
14 alien; and
- 15 (c) Pays a reinstatement fee equal to the cost of investigating and
16 enforcing the matter, or one thousand dollars, whichever is less.
- 17 b. For all other occurrences in which a private employer's license is revoked, the
18 private employer may not seek reinstatement of the private employer's license for
19 five years. After five years, the commissioner may grant reinstatement of a
20 private employer's licenses if the private employer:
- 21 (1) Agrees to be on probation for three years, during which time the private
22 employer shall submit quarterly reports to the commissioner demonstrating
23 compliance with the provisions of sections 34-16-02 and 34-16-03;
- 24 (2) Demonstrates the private employer has terminated the employment of the
25 unauthorized alien; and
- 26 (3) Pays a reinstatement fee equal to the cost of investigating and adjudicating
27 the matter, or one thousand dollars, whichever is less.
- 28 c. If a private employer engages in business or employs a new employee during the
29 period the private employer's license is suspended, the private employer's
30 license must be revoked, and may not be reinstated for five years, and only upon

1 a determination by the commissioner that the private employer has complied with
2 this subsection.

3 5. It is a separate violation each time a private employer fails to verify the immigration
4 status of a new employee as required by section 34-16-02.

5 6. In taking a disciplinary action for a violation of section 34-16-02 or 34-16-03, the
6 commissioner shall base the commissioner's determination on any evidence or
7 information collected during the investigation or submitted for consideration by the
8 employer, and shall consider:

9 a. The number of employees for whom the private employer has failed to verify the
10 employee's immigration status;

11 b. Prior violations of this chapter by the private employer;

12 c. The size of the private employer's workforce;

13 d. Any actions taken by the private employer to comply with federal immigration
14 laws or this chapter;

15 e. Any actions taken by the private employer subsequent to the inspection or
16 random audit to comply with this chapter;

17 f. The duration of the violation;

18 g. The degree of the violation; and

19 h. The good faith of the private employer.

20 7. The commissioner shall maintain a list of all private employers that have violated a
21 provision of this chapter and shall publish the list on the agency's website. The
22 commissioner shall remove a private employer from the list if the private employer has
23 committed only a first occurrence pursuant to section 34-16-02, six months after the
24 private employer's name has been published, if the private employer has not
25 subsequently had a license revoked or suspended under this chapter within the
26 one-year probation period.

27 8. If a private employer continues to engage in business after the private employer's
28 license has been revoked under this chapter, the commissioner shall seek an
29 injunction from an administrative law judge to enjoin the private employer from
30 continuing to operate the private employer's business for which the private employer's
31 license was revoked or from employing new employees.

1 9. The commissioner shall notify the applicable agency if the commissioner determines a
2 private employer's license is suspended or revoked under this section and the
3 applicable agency immediately shall suspend or revoke the private employer's license.

4 10. A license suspension or revocation under this section:

5 a. Does not constitute a dissolution, liquidation, or a winding down process; or a
6 transfer, or other taxable event for tax purposes; and

7 b. Does not affect protections against personal liability.

8 **34-16-06. Filing false or fraudulent documents - Penalty.**

9 In addition to other penalties provided for by law, a person that knowingly makes or files a
10 false, fictitious, or fraudulent document, statement, or report under this chapter is guilty of a
11 class C felony.

12 **34-16-07. Local ordinances limiting enforcement of chapter.**

13 A political subdivision may not enact an ordinance or policy that limits or prohibits a law
14 enforcement officer or political subdivision employee from seeking to enforce this chapter.

15 **34-16-08. Equal enforcement of chapter.**

16 This chapter is enforceable without regard to race, religion, gender, ethnicity, or national
17 origin.

18 **34-16-09. Compliance with federal immigration requirements.**

19 This chapter does not abrogate a private employer's obligation to comply with federal
20 immigration law, including the proper completing and maintaining of federal employment
21 eligibility verification forms or documents.

22 **34-16-10. Exemption from civil action for wrongful termination.**

23 A private employer that terminates an employee from employment to comply with this
24 chapter is not subject to a civil action for wrongful termination of the employee.

25 **34-16-11. Rules - Statewide random auditing program.**

26 1. The commissioner shall adopt rules to establish a procedure for administrative review
27 of any disciplinary action against a private employer under this chapter.

28 2. The commissioner shall develop a statewide random auditing program to inspect
29 private employers for compliance with this chapter, and shall adopt rules governing the
30 implementation of the audit program.

1 **34-16-12. Right of entry and inspection by inspectors.**

2 The commissioner, upon proper presentation of credentials to the owner, manager, or agent
3 of the employer, may enter at reasonable times and have the right to question either publicly or
4 privately any employer, owner, manager, or agent and the employees of the private employer
5 and inspect, investigate, reproduce, or photograph original business records relevant to
6 determining compliance with this chapter.