

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1291

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1291
1/29/2025

A BILL for an Act to create and enact a new section to chapter 34-05 of the North Dakota Century Code, relating to the prohibition of the employment of unauthorized workers; and to provide a penalty.

9:00 a.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Christy, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Federal law
- Not illegal in North Dakota
- First offense penalty
- Business license suspension
- Unknown numbers of undocumented employees
- E-Verify not required in ND
- Businesses with no license
- Federal penalties
- Ambiguity language
- Federal preemption concerns
- Labor case backlog
- Investigative authority
- Employment law

9:01 a.m. Representative Matthew Heilman, District 7, Bismarck ND, introduced, testified and submitted testimony #32428 and #32429

9:12 a.m. Arik Spencer, President and CEO, Greater North Dakota Chamber, testified in opposition and submitted testimony #32609.

9:23 a.m. Zachary N. Greenberg, Interim Commissioner, ND Department of Labor and Human Rights, testified in opposition and submitted testimony #32291.

9:33 a.m. Landis Larson, President, North Dakota AFL-CIO, testified in opposition.

9:37 a.m. Michael Monroe, Director of Business Services, ND Secretary of State, testified as neutral.

Additional written testimony:

Shari Rendall, Director of State and Local Engagement, FAIR, submitted testimony in favor #31909

House Industry, Business and Labor Committee

HB 1291

01/29/25

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9:43 a.m. Chairman Warrey closed the hearing.

Diane Lillis, Committee Clerk



The Honorable Jonathan Warrey, 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 Warrey and other distinguished members of the Committee:

My name is Shari Rendall and I am the Director of State and Local Engagement. I appreciate the opportunity to submit testimony on behalf of 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 approximately 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) 1291 which would require employers to ensure a legal workforce.

Americans lose out on millions of job opportunities every year because companies seeking cheap labor choose to fill positions with illegal aliens. Since most illegal aliens come to the United States from impoverished countries with failing economies, the vast majority are willing to work for any remuneration they consider reasonable, even though the wage offered may be significantly below the market rate or even below legal minimum wage. Unscrupulous employers regularly exploit illegal alien laborers to cut their costs and increase their profits.

Moreover, Pew Research found in 2022 approximately 8.3 million illegal aliens participated in the US labor force and according to FAIR's 2023 Cost Study at least 25 percent of those operate in the "underground economy" – that is, they work "under the

table.” These individuals are not authorized to work in the United States and their employers do not comply with applicable immigration, safety, wage and hour, and tax laws. In most cases, the employer and the illegal alien willfully collaborate to violate the law. In others, employers rely on weak employment verification requirements and voluntarily turn a blind eye to questionable identity and immigration documents.

With 7.4 percent of the U.S. workforce currently unemployed or underemployed as of November 2022, those who are lawfully permitted to work in this country deserve every opportunity to find jobs without competing against illegal aliens willing to work for sub-standard wages. Requiring employers to verify their workforce is therefore smart public policy because it not only protects employers from violating the law – it protects American workers from unfair job competition and wage depression.

For the aforementioned reasons, FAIR urges you to favorably pass HB 1291.

Sincerely,

A handwritten signature in black ink that reads "Shari Rendall". The script is fluid and cursive, with the first letters of "Shari" and "Rendall" being capitalized and prominent.

Shari Rendall

Director of State and Local Engagement

69th Legislative Assembly
Regular Session (2025)

H.B. 1291

OPPOSITION

House Industry Business & Labor Committee

Rep. Jonathan Warrey, Chairman

Rep. Mitch Ostlie, Vice Chairman

Rep. Jorin Johnson, Vice Chairman

Testimony of Zachary Greenberg

Interim Commissioner of Labor

N.D. Department of Labor and Human Rights

January 29, 2023

Chairman Warrey and Members of the Committee,

Thank you for the opportunity to testify today regarding House Bill 1291. My name is Zachary Greenberg, and I am the interim Commissioner of the North Dakota Department of Labor and Human Rights. While I appreciate the bill's intent to address the problem of hiring unauthorized workers, I have significant concerns about its impact on the Department of Labor and Human Rights and its potential conflicts with federal law. For the reasons discussed below, I respectfully recommend a do not pass on House Bill 1291.

1. Federal Preemption Concerns

House Bill 1291 assigns the Department of Labor and Human Rights the responsibility to investigate allegations related to the hiring of unauthorized workers. As you probably know already, immigration enforcement falls under federal jurisdiction and is primarily regulated by the U.S. Department of Homeland Security (DHS) and the Department of Justice (DOJ).

- **Federal Preemption:** Under the Supremacy Clause of the U.S. Constitution, federal immigration laws supersede state laws in this area. The Immigration Reform and Control Act (IRCA) of 1986 explicitly preempts state enforcement of unauthorized employment except in limited cases.
- **Department's Role:** The North Dakota Department of Labor does not currently investigate immigration-related matters, nor does it have the resources, expertise, or legal authority to do so. Assigning this responsibility to the Department could lead to conflicts with federal agencies and expose the state to potential legal challenges.

2. Conflict of Interests

The Department of Labor and Human Rights is statutorily obligated to protect workers from discrimination in hiring and employment practices. However, enforcing this bill could create a conflict of interest for the Department and open the door to claims that the Department is facilitating or encouraging employment discrimination based on race, color, national origin or perceived immigration status.

- **Employers' Dilemma:** This bill may place private employers in a difficult position, where they feel pressured to avoid hiring or prematurely terminate employees based on assumptions about their immigration status—potentially leading to claims of unlawful employment discrimination under federal and state law.
- **Department's Liability:** Investigating alleged violations under this bill could place the Department in direct conflict with the anti-discrimination protections we are obligated to uphold, especially under Title VII of the Civil Rights Act and the North Dakota Human Rights Act.

3. Practical Challenges in Enforcement

- **Resource Constraints:** The department does not have the investigatory capacity to handle these allegations and shifting resources away our current goal of reducing our backlog—would hinder our ability to serve workers and employers in the state.

Conclusion

For these reasons, I urge the committee to recommend a DO NOT PASS for House Bill 1291. Assigning immigration-related investigations to the Department of Labor and Human Rights raises constitutional, legal, and practical concerns that could lead to federal preemption challenges, increased discrimination claims, and administrative burdens.

Thank you for your time, and I will stand for any questions.

25.0654.01001
Title.

Prepared by the Legislative Council
staff for Representative Heilman
January 27, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1291

Introduced by

Representatives Heilman, Kasper, D. Johnston, Nehring, Morton, VanWinkle

Senator Castaneda

1 A BILL for an Act to create and enact a new section to chapter 34-05 of the North Dakota
2 Century Code, relating to the prohibition of the employment of unauthorized workers; and to
3 provide a penalty.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 **SECTION 1.** A new section to chapter 34-05 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Unauthorized workers - Prohibition - Penalty.**

8 1. As used in this section:

9 a. "Business license" means a license, permit, registration, or other authorization
10 required by law for a business to operate in the state.

11 b. "Private employer" means a person transacting business in the state, which
12 employs one or more individuals.

13 c. "Unauthorized worker" means an unauthorized alien as defined by 8 U.S.C.
14 Section 1324a(h)(3).

15 2. A private employer may not hire for employment an unauthorized worker or continue to
16 employ an individual, knowing the individual has become an unauthorized worker.

17 3. The labor commissioner shall investigate an alleged violation under this section. If the
18 labor commissioner finds evidence of a violation, the labor commissioner shall refer
19 the alleged violation to the attorney general for prosecution.

20 4. A person who violates this section is subject to a civil penalty not to exceed:

- 1 a. Five thousand dollars and the suspension of the person's business license until
- 2 the unauthorized worker's employment is terminated, if it is the person's first
- 3 offense under this section.
- 4 b. Ten thousand dollars and the suspension of the person's business license for six
- 5 months, if it is the person's second offense under this section.
- 6 c. Thirty thousand dollars and the permanent revocation of the person's business
- 7 license, if it is the person's third offense under this section.
- 8 5. A violation of this section is a single offense under subsection 4, regardless of the
- 9 number of unauthorized workers hired or employed.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Matthew Heilman

District 7
5501 Flatrock Drive
Bismarck, ND, 58503-8929
mheilman@ndlegis.gov

COMMITTEES:

Education
Political Subdivisions

January 29th, 2025

Chairman Warrey and members of the Industry, Business and Labor Committee,

My name is Matt Heilman, and I am a state representative from North Dakota's seventh legislative district in Bismarck. I am bringing HB 1291 forward because people who do not have legal status should not be taking jobs from those who are legal.

This bill prohibits an employer from knowingly employing an unauthorized worker. The word "knowing" is key here and can be found on page one line sixteen. The labor commissioner shall investigate a violation of this section if an individual reports that a private employer is violating this section. If the labor commissioner finds evidence of a violation, the labor commissioner shall refer the alleged violation to the Attorney General for prosecution. The penalties are listed in the bill on page one line twenty through page two line four.

You may be asking yourself, is this not already a crime? Yes, it is a federal crime to knowingly hire an unauthorized worker under 8 U.S. Code § 1324a. However, states cannot enforce federal laws. To my knowledge, North Dakota does not have any specific laws prohibiting the employment of unauthorized workers. We saw under the Biden administration that many existing laws were not being enforced surrounding this issue. There is no guarantee that this will not happen again. It is time for the states to take matters into their own hands and address this topic.

The Supreme Court ruled in 2011 that Arizona's SB 1070 allows states to revoke business licenses for hiring illegals. The Supreme Court in that case also ruled states can mandate E-Verify. Multiple states have now mandated E-Verify. I am also surprised that there is no fiscal note requiring an FTE. This is because during the last session when I introduced E-Verify, HB 1527, the Labor Commission said it would require two new FTEs. Although this bill has nothing to do with E-Verify, I would be in support of new FTEs to ensure that unauthorized workers are not working in North Dakota.

I do have an amendment to clarify a question someone had about this bill. The question I received was if someone has three unauthorized workers employed, does that count for one offense or are they at the third offense already? This piece of legislation is a commonsense bill and I hope we can pass it with flying colors. Mr. Chairman and members of the committee, I respectfully ask for a do pass recommendation and I will stand for any questions you may have.



GREATER NORTH DAKOTA CHAMBER
HB 1291
House Industry Business & Labor Committee
Chair Jonathan Warrey
January 29, 2025

Mr. Chairman and members of the Committee, my name is Arik Spencer, the President and CEO of the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **opposition** of House Bill 1291.

GNDC expects all businesses in ND to comply with all state and federal laws. Regarding the penalties for hiring an undocumented worker, violations of existing federal immigration laws can result in significant civil fines and criminal penalties for employers. The specific fines depend on the circumstances, but in general, fines are as follows:

1. **For First Offenses:**
 - Fines range from **\$250 to \$2,000** per unauthorized worker.
2. **For Second Offenses:**
 - Fines can increase to **\$2,000 to \$5,000** per unauthorized worker.
3. **For Subsequent Offenses:**
 - Fines can range from **\$3,000 to \$10,000** per unauthorized worker.
4. **For Reckless or Intentional Violations:**
 - Employers who knowingly hire undocumented workers or have a pattern of violations can face even higher fines, ranging from **\$3,000 to \$16,000** per worker.
5. **Criminal Penalties:**
 - In extreme cases, employers could face criminal charges, which might lead to imprisonment for up to **6 months** for first offenses and **up to 5 years** for subsequent offenses.

Additionally, an employer could be subject to other consequences, such as being banned from federal contracts or grants.

Employers must verify workers' legal status using the I-9 form or optional E-Verify system to avoid these penalties. The exact amount of the fine depends on the number of times the violation occurs and the level of intent behind it.

Our concern with HB 1291 is the suspension or loss of a business license for any violation because when a business license is suspended, business operations must cease, which could result in the business not being able to conduct certain business functions, like paying legal employees, resulting in state and federal labor law violations, and negatively impacting legal workers.

We are also concerned about the impact of a potential shutdown of a business related to an electrical generation business or healthcare provider and what the suspension of business licenses means for businesses with multiple locations.

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1291
1/29/2025

A BILL for an Act to create and enact a new section to chapter 34-05 of the North Dakota Century Code, relating to the prohibition of the employment of unauthorized workers; and to provide a penalty.

3:50 p.m. Chairman Warrey opened the hearing.

Members Present: Chairman Warrey, Vice Chair Ostlie, Vice Chair Johnson, Representatives Bahl, Brown, Christy, Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Willfully/knowingly
- AG investigates
- AG regarding violations

3:56 p.m. Representative Koppelman moved Adopt Amendment, LC #25.0654.01001 (#32428 1/29/25 a.m.)

3:56 p.m. Representative Koppelman withdrew his motion.

4:03 p.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1291
2/5/2025

A BILL for an Act to create and enact a new section to chapter 34-05 of the North Dakota Century Code, relating to the prohibition of the employment of unauthorized workers; and to provide a penalty.

11:14 p.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Member Absent: Representative Christy

Discussion Topics:

- Undocumented worker
- Federal penalties
- May investigate
- Relates to employer

11:18 a.m. Representative D. Ruby moved Adopt Amendment #35928.

11:18 a.m. Representative Schatz seconded the motion.

Voice vote.

Motion passes.

11:19 a.m. Representative Schauer moved Do Pass as amended.

11:19 a.m. Representative Koppelman seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	N
Representative Landon Bahl	N
Representative Collette Brown	AB
Representative Josh Christy	AB
Representative Lisa Finley-DeVile	N
Representative Karen Grindberg	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y

Representative Mike Schatz	N
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion passed 7-5-2

11:34 a.m. Representative Koppelman will carry the bill.

11:34 p.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

February 5, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1291

Introduced by

Representatives Heilman, Kasper, D. Johnston, Nehring, Morton, VanWinkle

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12 employs one or more individuals.

13 c. "Unauthorized worker" means an unauthorized alien as defined by 8 U.S.C.
14 Section 1324a(h)(3).

15 2. A private employer may not willfully hire for employment an unauthorized worker or
16 continue to employ an individual, knowing the individual who has become an
17 unauthorized worker.

18 3. The labor commissioner shall investigate an alleged violation under this section
19 may be filed by an individual with the attorney general and the attorney general may
20 investigate the alleged violation. If the labor commissioner finds evidence of a

Jobs 2012

- 1 violation, the labor commissioner shall refer the
2 referred by the attorney general for prosecution.
3 4. A person who violates this section is subject to a civil penalty not to exceed:
4 a. Five~~Two~~ thousand dollars and the suspension of the person's business license
5 until the unauthorized worker's employment is terminated, if it is the person's first
6 offense under this section.
7 b. Ten~~Five~~ thousand dollars and the suspension of the person's business license for
8 six months, if it is the person's second offense under this section.
9 c. Thirty~~Ten~~ thousand dollars and the permanent revocation of the person's
10 business license, if it is the person's third or subsequent offense under this
11 section.

**REPORT OF STANDING COMMITTEE
HB 1291**

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **AMENDMENTS** ([25.0654.01003](#)) and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1291 was placed on the Sixth order on the calendar.

25.0654.01000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1291

Introduced by

Representatives Heilman, Kasper, D. Johnston, Nehring, Morton, VanWinkle

Senator Castaneda

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16 continue to

employ an individual, ~~knowing the individual that~~ has become an unauthorized worker.

17 3. ~~The labor commissioner shall investigate an~~ An alleged violation under this section may
be filed by an individual with the attorney general and the attorney general may investigate
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18 ~~labor commissioner finds evidence of a violation, the labor commissioner shall refer~~

19 ~~the~~ An alleged violation to the ~~may be referred by the~~ attorney general for prosecution.

20 4. A person who violates this section is subject to a civil penalty not to exceed:

21 a. ~~Five Two~~ thousand dollars and the suspension of the person's business license until

22 ~~the unauthorized worker's employment is terminated,~~ if it is the person's first

- 1 b. ~~Ten~~ Five thousand dollars ~~and the suspension of the person's business license for~~
2 ~~six months~~, if it is the person's second offense under this section.
- 3 c. ~~Thirty~~ Ten thousand dollars ~~and the permanent revocation of the person's business~~
4 ~~license~~, if it is the person's third offense under this section.

2025 SENATE WORKFORCE DEVELOPMENT

HB 1291

2025 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

HB 1291
3/21/2025

Relating to the prohibition of the employment of unauthorized workers; and to provide a penalty.

10:23 a.m. Chairman Wobbema called the meeting to order.

Members Present: Chairman Wobbema, Vice-Chairman Axtman, Senator Boschee, Senator Larson, Senator Powers.

Discussion Topics:

- State Law Implementation
- Bill Conversion to Study
- Unintentional Employment of Undocumented Individuals
- The Immigration Reform and Control Act of 1986

10:23 a.m. Representative Matthew Heilman, District 7, introduced the bill.

10:28 a.m. Sue Swanson testified in opposition.

10:45 a.m. Arik Spencer, President and CEO of Greater ND Chamber, testified in opposition.

10:46 a.m. Anna Marie E. Stenson, Attorney, testified in opposition and submitted testimony #43391.

Additional Testimony:

Megan Carranza, PLLC Attorney with Carranza Immigration Law, submitted written testimony #43334.

10:56 a.m. Chairman Wobbema closed the hearing.

Andrew Ficek, Committee Clerk

**Megan Carranza**

Immigration Attorney
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Bismarck, ND 58501

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March 20, 2025

Workforce Development Committee Chair Wobbema and members of the Committee:

House Bill 1291 bill is preempted by federal law, 8 U.S.C. § 1324a, which governs the employment of unauthorized workers in the United States. The federal statute establishes a comprehensive framework for prohibiting the hiring and continued employment of unauthorized noncitizens, including penalties and enforcement mechanisms. Under the Supremacy Clause of the U.S. Constitution, federal law overrides conflicting state laws in areas where Congress has expressed intent to occupy the field, such as immigration and employment verification.

Federal law already imposes penalties on employers who knowingly hire or continue to employ unauthorized noncitizens. Federal law also provides employability verification systems: I-9 Employment Eligibility Verification and E-Verify. Last, federal law includes an affirmative defense for employers who comply with employment verification in good faith.

House Bill 1291, by creating additional penalties and an enforcement mechanism through the state attorney general, is unnecessary. It conflicts with and is preempted by the federal framework, which exclusively governs employer sanctions related to unauthorized workers. The Supreme Court ruled in a similar case, *Arizona v. United States*, 567 U.S. 387 (2012), that state laws imposing their own employment-related sanctions on unauthorized workers are invalid due to federal preemption. Therefore, if enacted, the North Dakota bill would likely be struck down as unconstitutional.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan Carranza", written in a cursive style.

Megan Carranza
Attorney at Law

Testimony in Opposition to HB 1291

Chairman Wobbema and members of the committee.

I stand in opposition to the bill in front of you. My name is Anna Marie Stenson. I am a licensed attorney in North Dakota.

If there would be a theme to my testimony, it would likely be “How not to testify before a legislative committee.” In the alternative, maybe what this bill is not.

My practice focuses primarily on immigration law. However, I do not practice employment based immigration law. That is a different area of immigration than my practice that focuses on family based immigration law. I also am not an immigration attorney who focuses on I-9 compliance. That is yet another specialized practice within the immigration bar.

My experience is not about an employer who may hire an unauthorized worker. I do receive those calls. This is from employers both big and small. A frequent example, an employer in the state has found what they consider someone who could be an exceptional worker for them. They ask how they go about helping an undocumented worker to obtain legal status to work for them. I politely say, it probably isn't possible under our current immigration laws. This bill does not address the problems with our current immigration laws that make it difficult for many to obtain work authorization. It also does not address the immigration system that does not let an employer try and assist an unauthorized worker to obtain lawful employment status.

I can speak to employees who reach out to me because their employer is threatening to terminate them because the employer feels the worker is no longer authorized to work. In many instances, the employee is authorized to work but the immigration laws are so complex that the employer doesn't understand the process. That is only for employees who know to reach out to an immigration attorney. What about the employees who do not know how to find an immigration attorney. Those authorized employees are being terminated because the employer does not know immigration law and the complexities of who is legally authorized to work under federal immigration law. This bill does not protect authorized workers from being terminated. In fact, one could argue the bill provides incentives to employers to falsely terminate employees. Under federal I-9, employment enforcement there are protections for unlawfully terminated employees, HB 1291 does not appear to provide those protections.

In a state with a severe workforce shortage, even turning away one authorized worker because of a concern for state penalties can have an economic impact for the state and the individual employer.

This bill also does not protect an unauthorized employee who is working for an employer for being exploited because of the employee's status. While targeting employers who employ unauthorized workers is definitely a step in trying to control unauthorized employment by targeting the employer rather than the undocumented individual, I do not believe the bill is well

thought out on not only how it would be applied and enforced but perhaps some of the unintended consequences.

The way that I read the language of HB 1291 there appears to be no requirement that the Attorney General's office verify with federal authorities whether the employee is recognized under federal law to be work authorized.

That leads to my last key point about what this bill is not. I do not believe this bill, as written, is constitutional. I am not a constitutional scholar but I can understand that there are certain actions that are within the purview of the federal government and others that are within the purview of the state government.

The U.S. Congress and federal courts, in recent history, have consistently held that the U.S. Constitution grants the federal government authority over immigration matters. The Immigration Reform and Control Act of 1986 (IRCA) explicitly regulates the employment of unauthorized workers. The U.S. Supreme Court has consistently held that immigration enforcement and policies related to unauthorized workers primarily fall under federal jurisdiction. States cannot impose regulations that conflict with or duplicate a federal law.

In *Arizona v US*, the Supreme Court very clearly found that state penalties for employment authorization were preempted by IRCA.

"When there was no comprehensive federal program regulating the employment of unauthorized aliens, this Court found that a State had authority to pass its own laws on the subject." *Arizona v. United States*, 567 U.S. 387, 404 (2012) (discussing *De Canas v. Bica*, 424 U.S. 351 (1976), which upheld a California state law regulating the employment of noncitizens). Before IRCA, "the Federal Government had expressed no more than 'a peripheral concern with [the] employment of illegal entrants.'" *Arizona*, 567 U.S. at 404 (quoting *De Canas*, 424 U.S. at 360).

Since IRCA, however, federal law has been "substantially different from the regime that prevailed when *De Canas* was decided." *Id.* Specifically, "Congress enacted IRCA as a comprehensive framework for 'combating the employment of [undocumented] aliens.'" *Id.* (emphasis added, quoting *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002)); see generally *id.* at 404-05 (discussing various aspects of the comprehensive federal regulation of the employment of unauthorized workers).

Arizona held that a State's attempt to criminally penalize employees for unauthorized work—where Congress had deliberately chosen not to do so—was impliedly preempted as an obstacle to the "the careful balance struck by Congress with respect to unauthorized employment of [noncitizens]." *Id.* at 406. There, the challenged state law "attempt[ed] to achieve one of the same goals as federal law—the deterrence of unlawful employment"—yet it was preempted because of the conflict it presented "in the method of enforcement." *Id.*

Courts have recognized the state's ability to enforce unauthorized workers in limited circumstances, such as being tied to the state's authority to issue business licenses. That provision was purposely removed from the bill on the House side.

Thank you for the opportunity to speak in opposition to HB 1291.

Anna Marie Stenson

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Fargo, ND 57107

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2025 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

HB 1291
4/3/2025

Relating to the prohibition of the employment of unauthorized workers; and to provide a penalty.

10:06 a.m. Chairman Wobbema called the meeting to order.

Members Present: Chairman Wobbema, Vice-Chairman Axtman, Senator Boschee, Senator Larson, Senator Powers.

Discussion Topics:

- In-State Employment Opportunities
- Federal Law Compliance

10:08 a.m. Senator Boschee moved to adopt amendment LC#25.0654.02001.

10:09 a.m. Senator Axtman seconded the motion.

Senators	Vote
Senator Mike Wobbema	Y
Senator Michelle Axtman	Y
Senator Josh Boschee	Y
Senator Diane Larson	Y
Senator Michelle Powers	Y

Motion passed 5-0-0.

10:17 a.m. Senator Axtman moved Do Not Pass as Amended.

10:17 a.m. Senator Powers seconded the motion.

Senators	Vote
Senator Mike Wobbema	Y
Senator Michelle Axtman	Y
Senator Josh Boschee	Y
Senator Diane Larson	Y
Senator Michelle Powers	Y

Motion passed 5-0-0.

Senator Powers will carry the bill.

10:18 a.m. Chairman Wobbema closed the hearing.

Senate Workforce Development Committee

HB 1291

04/03/2025

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Andrew Ficek, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VG 4/3/25
1 of 2

ENGROSSED HOUSE BILL NO. 1291

Introduced by

Representatives Heilman, Kasper, D. Johnston, Nehring, Morton, VanWinkle

Senator Castaneda

1 A BILL ~~for an Act to create and enact a new section to chapter 34-05 of the North Dakota~~
2 ~~Century Code, relating to the prohibition of the employment of unauthorized workers; and to~~
3 ~~provide a penalty.~~ for an Act to provide for a legislative management study relating to
4 immigration law.

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

6 ~~— **SECTION 1.** A new section to chapter 34-05 of the North Dakota Century Code is created~~
7 ~~and enacted as follows:~~

8 ~~— **Unauthorized workers - Prohibition - Penalty.**~~

9 ~~— 1. As used in this section:~~

10 ~~— a. "Business license" means a license, permit, registration, or other authorization~~
11 ~~required by law for a business to operate in the state.~~

12 ~~— b. "Private employer" means a person transacting business in the state, which~~
13 ~~employs one or more individuals.~~

14 ~~— c. "Unauthorized worker" means an unauthorized alien as defined by 8 U.S.C.~~
15 ~~Section 1324a(h)(3).~~

16 ~~— 2. A private employer may not willfully hire for employment an unauthorized worker or~~
17 ~~continue to employ an individual who has become an unauthorized worker.~~

18 ~~— 3. An alleged violation under this section may be filed by an individual with the attorney~~
19 ~~general and the attorney general may investigate the alleged violation. An alleged~~
20 ~~violation may be referred by the attorney general for prosecution.~~

~~4. A person who violates this section is subject to a civil penalty not to exceed:~~
~~a. Two thousand dollars if it is the person's first offense under this section.~~
~~b. Five thousand dollars if it is the person's second offense under this section.~~
~~c. Ten thousand dollars if it is the person's third or subsequent offense under this section.~~

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - IMMIGRATION LAW.

1. During the 2025-26 interim, the legislative management shall consider studying federal jurisdiction over immigration law, illegal immigration, and immigration law in other states. The study must include:
 - a. An overview of federal pre-emption of state or local law related to immigration.
 - b. A survey of the laws of this state and other states regarding individuals living and working in the United States without authorization.
 - c. A review of case law affecting the states' ability to enact laws regarding unauthorized workers.
 - d. Information regarding the manner in which local law enforcement agencies coordinate with federal law enforcement agencies.
 - e. Input from the private sector and pro-business lobbyists, the office of the attorney general, and the secretary of state.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1291**

Workforce Development Committee (Sen. Wobbema, Chairman) recommends **AMENDMENTS** ([25.0654.02001](#)) and when so amended, recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1291 was placed on the Sixth order on the calendar. This bill does not affect workforce development.