

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.
- 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 the e-verify federal work authorization
22 program's website for the sole purpose of registering and participating in the program.

23 4. A private employer may employ provisionally a new employee until the new
24 employee's work authorization has been verified pursuant to this section. A private
25 employer shall submit a new employee's name and information for verification even if
26 the new employee's employment is terminated less than three business days after
27 becoming employed. If a new employee's work authorization is not verified by the
28 federal work authorization program, a private employer may not employ, continue to
29 employ, or reemploy the new employee.

30 5. The commissioner shall send written notice of the requirements of this section to all
31 employers, and shall publish the information contained in the notice 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 against a private employer, or upon an
18 investigation initiated by the commissioner for good cause, if the commissioner finds
19 reasonable grounds exist that a private employer violated the provisions of section
20 34-16-02 or 34-16-03, the commissioner shall institute an investigation of the alleged
21 violation. The commissioner shall verify the work authorization status of the alleged
22 unauthorized alien with the federal government pursuant to 8 U.S.C. section 1373(c).
23 A state, county, or other local official may not attempt to independently determine if an
24 alien is authorized to work in the United States.

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

30 a. Notify the United States immigration and customs enforcement of suspected
31 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.