

**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.