

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

5

HOUSE BILL 100
Committee Substitute Favorable 4/28/15
Third Edition Engrossed 4/29/15
Senate Judiciary II Committee Substitute Adopted 6/4/15
Senate Judiciary II Committee Substitute Adopted 6/21/16

Short Title: Local Government Immigration Compliance.

(Public)

Sponsors:

Referred to:

February 24, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS REQUESTING TO BE EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS; TO RECODIFY THE STATUTE THAT PROHIBITS THE USE OF CERTAIN FORMS OF IDENTIFICATION BY STATE AND LOCAL OFFICIALS; TO REPEAL A STATUTORY EXCEPTION TO THAT STATUTE; AND TO CREATE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION.

The General Assembly of North Carolina enacts:

PART I. PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS REQUESTING TO BE EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS

SECTION 1.(a) Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"§ 9-6.2. Records of excusals from jury duty based on disqualification.

(a) The name and address of each person who requests to be excused from jury duty on the basis that he or she is not qualified to serve as a juror under G.S. 9-3, along with the reason for that request, shall be retained by the clerk of superior court for not less than two years from the date of excusal. The records retained by the clerk are not public records under G.S. 132-1.

(b) If a person is excused from jury duty for any reason relating to qualifications under G.S. 163-55, the record of his or her name, address, reason for excusal, and the date of excusal shall be a public record under G.S. 132-1 and shall be provided by the clerk of superior court to the State Board of Elections for the purposes listed in G.S. 163-82.14."

SECTION 1.(b) G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk shall keep a record of excuses separate from the master jury list in accordance with G.S. 9-6.2."

SECTION 1.(c) The Administrative Office of the Courts shall amend the Rules of Recordkeeping to include procedures to implement the provisions of G.S. 9-6.2, as enacted by this section.



* H 1 0 0 - V - 5 *

1
2 **PART II. RECODIFICATION OF STATUTE AND REPEAL OF STATUTORY**
3 **EXCEPTION**

4 **SECTION 2.(a)** G.S. 15A-311 is recodified as G.S. 64-6 under Article 1 of Chapter
5 64 of the General Statutes.

6 **SECTION 2.(b)** G.S. 15A-311, as recodified by subsection (a) of this section, reads as
7 rewritten:

8 **"§ 64-6. ~~Consulate~~Certain documents not acceptable as identification.**

9 (a) The following documents are not acceptable for use in determining a person's actual
10 identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other
11 government official:

- 12 (1) A matricula consular or other similar document, other than a valid passport,
13 issued by a consulate or embassy of another country.
14 (2) An identity document issued or created by any person, organization, county,
15 city, or other local authority, except where expressly authorized to be used for
16 this purpose by the General Assembly.

17 (b) No local government or law enforcement agency may establish, by policy or ordinance,
18 the acceptability of any of the documents described in subsection (a) of this section as a form of
19 identification to be used to determine the identity or residency of any person. Any local
20 government policy or ordinance that contradicts this section is hereby repealed.

21 ~~(c) Notwithstanding subsection (a) of this section, documents described in subdivision (2)~~
22 ~~of subsection (a) of this section may be used by a law enforcement officer to assist in determining~~
23 ~~the identity or residency of a person when they are the only documents providing an indication of~~
24 ~~identity or residency available to the law enforcement officer at the time."~~

25
26 **PART III. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS**
27 **TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION**

28 **SECTION 3.(a)** Chapter 64 of the General Statutes is amended by adding a new
29 Article to read:

30 "Article 3.

31 "Local Government Noncompliance with State Laws Related to Immigration.

32 **"§ 64-49. Findings.**

33 The General Assembly finds the following:

- 34 (1) That the policy objectives it seeks to further by enacting State laws applicable
35 to cities, counties, and law enforcement agencies are frustrated when those
36 entities do not uniformly comply with State law.
37 (2) That Section 7(1) of Article V and other sections of the North Carolina
38 Constitution grant the General Assembly supreme power and complete
39 discretion over the appropriation of State funds.
40 (3) That the General Assembly's power over the appropriation of State funds can be
41 used to create additional incentives for cities, counties, and law enforcement
42 agencies to comply with duly enacted laws.
43 (4) That statutorily setting forth the manner in which the General Assembly elects
44 to exercise its discretion with respect to appropriations provides cities, counties,
45 and law enforcement agencies with a measure of predictability that can be
46 useful to those entities in planning and carrying out their functions and duties.

47 **"§ 64-50. Definitions.**

48 The following definitions apply in this Article:

- 49 (1) Affected local government. – Any of the following:
50 a. A municipality found to be not in compliance with a State law related to
51 immigration.

- 1 b. A municipality in which a municipal law enforcement agency has been
2 found to be not in compliance with a State law related to immigration.
3 c. A county found to be not in compliance with a State law related to
4 immigration.
5 d. A county in which a county law enforcement agency has been found to
6 be not in compliance with a State law related to immigration.

7 (2) Law enforcement agency. – A municipal police department, a county police
8 department, or a sheriff's office.

9 (3) State law related to immigration. – G.S. 64-6(b), 153A-145.5, or 160A-205.2.

10 **"§ 64-51. Attorney General to prepare form.**

11 (a) Preparation of Form. – The Attorney General shall prescribe a form for a person to
12 allege that a city, county, or law enforcement agency is not in compliance with a State law related
13 to immigration. The form shall clearly state that completed forms shall be sent to the Attorney
14 General and the form shall be made available to the public on the Attorney General's Web site.

15 (b) Certain Information Not Required. – A person shall not be required to list the person's
16 Social Security number on the complaint form or to have the form notarized.

17 **"§ 64-52. Filing of statement alleging noncompliance with a State law related to**
18 **immigration.**

19 Any person with a good-faith belief that a city, county, or law enforcement agency is not in
20 compliance with a State law related to immigration may file a statement with the Attorney General
21 setting forth the basis for that belief. The statement may be on a form prescribed by the Attorney
22 General pursuant to G.S. 64-51 or may be made in any other form that gives the Attorney General
23 information sufficient to proceed with an investigation pursuant to G.S. 64-53. Nothing in this
24 section shall be construed to prohibit the filing of anonymous statements that are not submitted on
25 a prescribed form.

26 **"§ 64-53. Investigation.**

27 (a) Investigation. – Within 45 days of receipt of a statement filed in accordance with
28 G.S. 64-52, the Attorney General shall commence an investigation of whether the city, county, or
29 law enforcement agency is in fact not in compliance with a State law related to immigration. The
30 Attorney General shall make a determination and conclude an investigation commenced pursuant
31 to this subsection within 60 days of the investigation's commencement.

32 (b) Assistance by Law Enforcement. – The Attorney General may request that the State
33 Bureau of Investigation assist in an investigation under this section, and the State Bureau of
34 Investigation shall assist in the investigation when it receives such a request.

35 (c) Production of Documents. – A local government shall produce records or documents
36 related to alleged noncompliance with a State law related to immigration within 10 business days
37 of a request by the Attorney General to do so.

38 (d) Confidentiality. – Statements filed with the Attorney General pursuant to G.S. 64-52
39 and reports and other investigative documents and records of the Attorney General connected to an
40 investigation under this section shall be confidential and not matters of public record, except when
41 the local government under investigation requests in writing that these documents be made public.
42 Once an investigation under this section is complete, or once 60 days have elapsed since the
43 investigation was commenced, whichever is earlier, the statement and all other reports and other
44 investigative documents and records of the Attorney General connected to an investigation under
45 this section, not otherwise privileged or confidential under law, shall be public records.

46 **"§ 64-54. Consequences of noncompliance with a State law related to immigration.**

47 (a) Consequences of Noncompliance Generally. – If, after an investigation pursuant to
48 G.S. 64-53, the Attorney General determines that a city, county, or law enforcement agency is not
49 in compliance with a State law related to immigration:

- 50 (1) All affected local governments shall be ineligible to receive distributions under
51 G.S. 115C-546.2 and G.S. 136-41.1 for the fiscal year following the first date of

1 noncompliance with the State law related to immigration. If within 60 days of
2 the Attorney General's determination, the city, county, or law enforcement
3 agency fails to demonstrate to the Attorney General's satisfaction that the city,
4 county, or law enforcement agency is in compliance with all State laws related
5 to immigration, the period of ineligibility shall be extended for an additional
6 fiscal year.

7 (2) The Attorney General shall notify the following entities of the Attorney
8 General's determination that the city, county, or law enforcement agency is not
9 in compliance with a State law related to immigration and of the duration of the
10 period of ineligibility to receive funds determined pursuant to subdivision (1) of
11 this subsection:

12 a. Affected local governments.

13 b. The chairs of the Appropriations Committees of the Senate and House
14 of Representatives.

15 c. The chairs of the Joint Legislative Commission on Governmental
16 Operations.

17 d. The Office of State Budget and Management.

18 (3) The Office of State Budget and Management shall notify the Departments of
19 Public Instruction and Transportation and the State Controller of affected local
20 governments' ineligibility to receive the funds described in subdivision (1) of
21 this section. The Departments of Public Instruction and Transportation and the
22 State Controller shall ensure that these funds are not distributed to affected
23 local governments and that they are instead distributed to other local
24 governments that are eligible for distributions pursuant to the relevant statute.

25 (b) Consequences of Noncompliance with E-Verify Statutes. – When the Attorney General
26 receives a notification from the Commissioner of Labor pursuant to G.S. 64-33.1(b), the Attorney
27 General, the Office of State Budget and Management, the State Controller, and the Departments of
28 Public Instruction and Transportation shall take all of the actions described in subsection (a) of
29 this section except that those actions shall be taken with respect to only the following entities, as
30 applicable:

31 (1) A municipality found by the Commissioner of Labor to have violated
32 G.S. 143-133.3.

33 (2) A municipality in which all or part of a local school administrative unit
34 governed by a local board, as those terms are defined in G.S. 115C-5, found by
35 the Commissioner of Labor to have violated G.S. 143-133.3 is located.

36 (3) A county found by the Commissioner of Labor to have violated G.S. 143-133.3.

37 (4) A county in which all or part of a local school administrative unit governed by a
38 local board, as those terms are defined in G.S. 115C-5, found by the
39 Commissioner of Labor to have violated G.S. 143-133.3 is located.

40 (c) Exceptions. – No enactment by the General Assembly shall be construed as an
41 exception to this section unless it specifically mentions this section.

42 **"§ 64-55. Attorney General to maintain copies of orders; reporting.**

43 (a) Database. – The Attorney General shall maintain a database of the local governments
44 and law enforcement agencies that are ineligible to receive the funds described in G.S. 64-54(a)(1)
45 and shall make the database accessible to the public through the Attorney General's Web site.

46 (b) Reporting. – The Attorney General shall report quarterly to the Joint Legislative
47 Commission on Governmental Operations on all of the following:

48 (1) The number of statements received by the Attorney General pursuant to
49 G.S. 64-52.

50 (2) The number of investigations performed pursuant to G.S. 64-53.

1 (3) The number of times consequences for noncompliance with a State law related
2 to immigration were imposed pursuant to G.S. 64-54.

3 (4) The names of cities, counties, and law enforcement agencies found not to be in
4 compliance with a State law related to immigration.

5 **"§ 64-56. Appeal.**

6 A determination made by the Attorney General under this Article may be appealed only to the
7 extent and in the manner required by the United States and North Carolina Constitutions. The
8 imposition of consequences for noncompliance with a State law related to immigration pursuant to
9 G.S. 64-54 shall not occur until an appeal made under this section is complete. However, if an
10 appeal under this section is unsuccessful, the length of the period during which an affected local
11 government shall be ineligible to receive the funds described in G.S. 64-54(a)(1) shall be the same
12 as it would have been had no appeal been made, regardless of which fiscal year or years the
13 resulting period of ineligibility shall occur.

14 **"§ 64-57. Attorney General may designate appointed official to carry out duties.**

15 The Attorney General may designate a person to carry out the Attorney General's duties under
16 this Article. The designee shall be an individual appointed by the Attorney General and shall not
17 be a member of the Council of State or any other elected official.

18 **"§ 64-58. Rules.**

19 The Attorney General shall adopt rules needed to implement this Article.

20 **"§ 64-59. Article does not require action that is contrary to federal or State law.**

21 This Article shall not be construed to require a local government or law enforcement agency to
22 take any action that the local government or law enforcement agency believes in good faith would
23 violate federal or State law.

24 **"§ 64-60. Private enforcement.**

25 In addition to any other remedies at law or in equity, any person who resides within the
26 jurisdiction of a city, county, or law enforcement agency that the person believes is not in
27 compliance with a State law related to immigration may bring an action for declaratory and
28 injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court
29 shall award the prevailing party in an action brought under this section reasonable attorneys' fees
30 and court costs as authorized by law."

31 **SECTION 3.(b)** G.S. 64-33.1 reads as rewritten:

32 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

33 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
34 the board or governing body of the State, or of any institution of the State government, or of any
35 political subdivision of the State, found to have committed the violation that the board or
36 governing body of the State, or of any institution of the State government, or of any political
37 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
38 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
39 government, or of any political subdivisions of the State, issued notices pursuant to this section
40 and shall make that list available on its Web site.

41 (b) Violations by Certain Local Entities. – For a violation of G.S. 143-133.3 by a political
42 subdivision of the State, the Commissioner shall immediately notify the Attorney General of the
43 violation so that the Attorney General can take action in accordance with G.S. 64-54(b).
44 Additionally, the Commissioner shall notify the Attorney General if within 60 days of the
45 Commissioner's determination that there has been a violation, the political subdivision fails to
46 demonstrate to the Commissioner's satisfaction that the political subdivision is in compliance with
47 G.S. 143-133.3. The Commissioner may hold additional hearings as needed to implement this
48 subsection."

49 **SECTION 3.(c)** The Attorney General's Office, in conjunction with the Departments
50 of Transportation and Public Instruction, shall take reasonable steps to notify local governments of

1 the provisions of this act so that the local governments can take appropriate steps to comply with
2 this act's requirements.

3 **SECTION 3.(d)** G.S. 115C-546.2 is amended by adding a new subsection to read:

4 "(f) No county may receive any allocation under this section for any period during which it
5 is ineligible to receive those funds under G.S. 64-54."

6 **SECTION 3.(e)** G.S. 136-41.1 is amended by adding a new subsection to read:

7 "(e) No city or town shall receive any allocation under this section for any period during
8 which it is ineligible to receive those funds under G.S. 64-54."

9

10 **PART IV. EFFECTIVE DATE**

11 **SECTION 4.** Section 1 of this act becomes effective January 1, 2017. The remainder
12 of this act becomes effective August 1, 2016.