

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 922

Short Title: NC Illegal Immigration Prevention Act. (Public)

Sponsors: Representatives Holloway, Blust, Cleveland, Neumann (Primary Sponsors);
Blackwood, Brown, Burr, Dollar, Hilton, Killian, McGee, Moore, Setzer,
Starnes, and Stevens.

Referred to: Judiciary I, if favorable, Homeland Security, Military, and Veterans Affairs, if
favorable, Finance.

April 1, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA ILLEGAL IMMIGRATION
3 PREVENTION ACT TO PROVIDE FOR THE COMPREHENSIVE REGULATION OF
4 PERSONS IN THIS STATE WHO ARE NOT LAWFULLY PRESENT IN THE UNITED
5 STATES.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. SHORT TITLE**

9
10 **SECTION 1.** This act shall be known and may be cited as the "North Carolina
11 Illegal Immigration Prevention Act." All requirements of this act concerning immigration or the
12 classification of immigration status shall be construed in conformity with federal immigration
13 law.

14
15 **PART II. REQUIRE COUNTIES AND CITIES TO USE THE FEDERAL WORK**
16 **AUTHORIZATION PROGRAM TO VERIFY THE WORK AUTHORIZATION OF**
17 **NEW EMPLOYEES**

18
19 **SECTION 2.(a)** Article 5 of Chapter 153A of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 153A-94.3. County verification of employee work authorization.**

22 (a) Each county shall register and participate, or attempt to register and participate, in
23 the federal work authorization program to verify work authorization information of all new
24 employees.

25 (b) As used in this section, the term 'federal work authorization program' means any of
26 the electronic verification of work authorization programs operated by the United States
27 Department of Homeland Security or any equivalent federal work authorization program
28 operated by the United States Department of Homeland Security to verify information of newly
29 hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public
30 Law 99-603.

31 (c) This section shall be enforced without regard to race, religion, gender, ethnicity, or
32 national origin."

33 **SECTION 2.(b)** Article 7 of Chapter 160A of the General Statutes is amended by
34 adding a new section to read:



1 **"§ 160A-164.3. City verification of employee work authorization.**

2 (a) Each city shall register and participate, or attempt to register and participate, in the
3 federal work authorization program to verify work authorization information of all new
4 employees.

5 (b) As used in this section, the term 'federal work authorization program' means any of
6 the electronic verification of work authorization programs operated by the United States
7 Department of Homeland Security or any equivalent federal work authorization program
8 operated by the United States Department of Homeland Security to verify information of newly
9 hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public
10 Law 99-603.

11 (c) This section shall be enforced without regard to race, religion, gender, ethnicity, or
12 national origin.

13
14 **PART III. REQUIRE PUBLIC CONTRACTORS TO USE THE FEDERAL WORK**
15 **AUTHORIZATION PROGRAM**

16
17 **SECTION 3.(a)** Chapter 64 of the General Statutes is amended by adding a new
18 Article to read:

19 "Article 1.

20 "Various Provisions Relating to Aliens."

21 **SECTION 3.(b)** G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of
22 Chapter 64 of the General Statutes, as created by this section.

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

25 "Article 2.

26 "Unauthorized Aliens and Public Contracts.

27 **"§ 64-10. Definitions.**

28 The following definitions apply in this Article:

- 29 (1) End product. – Movable personal property described in the solicitation and
30 in final form and ready for the use intended including, without limitation,
31 commodities or equipment.
- 32 (2) Federal work authorization program. – Any of the electronic verification of
33 work authorization programs operated by the United States Department of
34 Homeland Security or any equivalent federal work authorization program
35 operated by the United States Department of Homeland Security to verify
36 information of newly hired employees, pursuant to the Immigration Reform
37 and Control Act of 1986 (IRCA), Public Law 99-603.
- 38 (3) Public agency. – This State and any county, municipality, or other political
39 subdivision of this State, of a county, or of a municipality.
- 40 (4) Unauthorized alien. – An alien who does not have the legal right or
41 authorization under federal law to work in the United States, as described in
42 8 U.S.C. § 1324a(h)(3).

43 **"§ 64-11. Contractors with public agencies must use federal work authorization program.**

44 (a) A public agency shall not enter into a contract for the physical performance of
45 services within this State unless the contractor agrees to do one of the following:

- 46 (1) Register and participate in the federal work authorization program to verify
47 the employment authorization of all new employees and require agreement
48 from its subcontractors, and through the subcontractors, the
49 sub-subcontractors, to register and participate in the federal work
50 authorization program to verify the work authorization of all new
51 employees.

- 1 (2) Employ only workers who satisfy at least one of the following:
2 a. Possess a valid North Carolina drivers license or identification card
3 issued by the North Carolina Division of Motor Vehicles.
4 b. Are eligible to obtain a North Carolina drivers license or
5 identification card in that they meet the requirements set forth in
6 Article 2 or Article 2C of Chapter 20 of the General Statutes.
7 c. Possess a valid drivers license or identification card from another
8 state where the license requirements are at least as strict as those in
9 North Carolina, as determined by the Commissioner of Motor
10 Vehicles or the Commissioner's designee. The Commissioner of
11 Motor Vehicles, or his designee, shall publish on the Web site of the
12 North Carolina Division of Motor Vehicles a list of states where the
13 license requirements are at least as strict as those in this State.

14 (b) No bill or contract shall be divided for the purpose of evading the provisions of this
15 Article.

16 **"§ 64-12. Applicability of Article.**

17 This Article does not apply to contracts about which any of the following are true:

- 18 (1) The public agency with whom the contractor contracts is the State, or a State
19 agency, board, department, or commission, and the total value of the
20 contract to be performed in a 12-month period is twenty-five thousand
21 dollars (\$25,000) or less.
22 (2) The public agency with whom the contractor contracts is a county,
23 municipality, or an agency of a county or a municipality, and the total value
24 of the contract to be performed in a 12-month period is fifteen thousand
25 dollars (\$15,000) or less.
26 (3) The total cost of the physical performance of manual labor is less than five
27 percent (5%) of the total contract price.
28 (4) The contract is primarily for the acquisition of an end product.
29 (5) The contract is predominantly for the performance of professional or
30 consultant services.

31 **"§ 64-13. Compliance with Article.**

32 (a) A public agency complies with this Article if it obtains a written statement from the
33 contractor certifying that the contractor will comply with the requirements of this Chapter and
34 will provide the public agency any documentation required to establish either of the following:

- 35 (1) The applicability of this Article to the contractor, subcontractor, and
36 sub-subcontractor.
37 (2) The compliance with this Chapter by the contractor and any subcontractor or
38 sub-subcontractor.

39 (b) A public agency need not audit or independently verify a contractor's compliance
40 with this Article.

41 **"§ 64-14. No sanction for contractors that comply with this Article in good faith.**

42 A contractor or public agency that complies in good faith with the requirements of this
43 Article shall not be sanctioned under this Article or subjected to any State or local civil or
44 administrative action for employing an unauthorized alien.

45 **"§ 64-15. Knowingly making a false statement a felony.**

46 A person who knowingly makes or files any false, fictitious, or fraudulent document,
47 statement, or report pursuant to this Article is guilty of a Class H felony.

48 **"§ 64-16. Local ordinances or policies hindering this Article not permitted.**

49 A local government shall not adopt any ordinance or policy that limits or prohibits a law
50 enforcement officer, local official, or local government employee from seeking to enforce the
51 provisions of this Chapter.

1 **"§ 64-17. Forms and rule making.**

2 The Secretary of Administration shall prescribe forms and adopt rules necessary for the
3 implementation of this Article."

4 **SECTION 3.(d)** G.S. 143-129 is amended by adding a new subsection to read:

5 "(i) No contract subject to this section may be awarded by any board or governing body
6 of the State, institution of the State government, or any political subdivision of the State, unless
7 the contractor complies with the requirements of Article 2 of Chapter 64 of the General
8 Statutes, where applicable."

9
10 **PART IV. REQUIRE PRIVATE EMPLOYERS TO USE THE FEDERAL WORK**
11 **AUTHORIZATION PROGRAM; PROHIBIT THE HIRING OF UNAUTHORIZED**
12 **ALIENS**

13
14 **SECTION 4.(a)** Chapter 64 of the General Statutes is amended by adding a new
15 Article to read:

16 "Article 3.

17 "Employment of Unauthorized Aliens.

18 **"§ 64-20. Definitions.**

19 The following definitions apply in this Article:

- 20 (1) Agency. – Any agency, department, board, or commission of this State, a
21 county, or city that issues a license for purposes of operating a business in
22 this State.
- 23 (2) Employ. – Hiring an employee after January 1, 2010.
- 24 (3) Employee. – Any person who provides services or labor for an employer in
25 this State for wages or other remuneration. This term does not include an
26 independent contractor.
- 27 (4) Employer. – Any individual or type of organization that transacts business in
28 this State, that has a license issued by an agency in this State, and that
29 employs one or more employees in this State. In the case of an independent
30 contractor, the term means the independent contractor and does not mean the
31 person or organization that uses the contract labor. The term does not
32 include governmental organizations.
- 33 (5) Federal work authorization program. – Any of the electronic verification of
34 work authorization programs operated by the United States Department of
35 Homeland Security or any equivalent federal work authorization program
36 operated by the United States Department of Homeland Security to verify
37 information of newly hired employees, pursuant to the Immigration Reform
38 and Control Act of 1986 (IRCA), Public Law 99-603.
- 39 (6) Independent contractor. – Any individual or entity that carries on an
40 independent business, that contracts to do a piece of work according to the
41 individual's or entity's own means and methods, and that is subject to control
42 only as to results. Whether an individual or entity is an independent
43 contractor is to be determined on a case-by-case basis through various
44 factors including whether the individual or entity:
- 45 a. Supplies the tools or materials.
- 46 b. Makes services available to the general public.
- 47 c. Works or may work for a number of clients at the same time.
- 48 d. Has an opportunity for profit or loss as a result of labor or service
49 provided.
- 50 e. Invests in the facilities for work.
- 51 f. Directs the order or sequence in which the work is completed.

- 1 g. Determines the hours when the work is completed.
2 (7) Intentionally. – With respect to a result or to particular conduct, acting with
3 the objective of causing that result or engaging in that conduct.
4 (8) Knowingly employ an unauthorized alien. – The actions described in 8
5 U.S.C. § 1324a(a)(1)(A). This term shall be interpreted consistently with any
6 applicable federal rules and regulations.
7 (9) License. – Any agency permit, certificate, approval, registration, charter, or
8 similar form of authorization that is required by law in order to operate a
9 business in this State. This term does not include any professional license.
10 (10) Social security number verification service. – The program administered by
11 the Social Security Administration to verify the social security numbers of
12 existing workers or any of its successor programs.
13 (11) Unauthorized alien. – An alien who does not have the legal right or
14 authorization under federal law to work in the United States as described in
15 8 U.S.C. § 1324a(h)(3).

16 **"§ 64-21. Effect of violations of federal immigration law.**

17 Whenever any employer has been convicted of violating a federal immigration law that
18 relates to the employment of unauthorized aliens, the county attorney in the county where the
19 unauthorized alien employee is or was employed by the employer shall bring an action pursuant
20 to this section. The county attorney shall not bring an action against any employer for any
21 violation of federal immigration law that occurs before January 1, 2010. The court shall treat
22 the violation of federal law as though it were a violation of State law and shall proceed
23 accordingly under G.S. 64-22(e). A second violation of this section shall be based only on
24 violation of federal law that occurs after an action has been brought pursuant to this section.

25 **"§ 64-22. Knowingly employing unauthorized alien prohibited; penalties.**

26 (a) An employer shall not knowingly employ an unauthorized alien. If, in the case when
27 an employer uses a contract, subcontract, or other independent contractor agreement to obtain
28 the labor of an alien in this State, the employer knowingly contracts with an unauthorized alien
29 or with a person who employs or contracts with an unauthorized alien to perform the labor, the
30 employer violates this subsection.

31 (b) The Attorney General shall prescribe a complaint form for a person to allege a
32 violation of subsection (a) of this section. The complainant shall not be required to list the
33 complainant's social security number on the complaint form or to have the complaint notarized.
34 On receipt of a complaint on a prescribed complaint form that an employer allegedly
35 knowingly employs an unauthorized alien, the Attorney General or county attorney shall
36 investigate whether the employer has violated subsection (a) of this section. If a complaint is
37 received but is not submitted on a prescribed complaint form, the Attorney General or county
38 attorney may investigate whether the employer has violated subsection (a) of this section. This
39 subsection shall not be construed to prohibit the filing of anonymous complaints that are not
40 submitted on a prescribed complaint form. The Attorney General or county attorney shall not
41 investigate complaints that are based solely on race, color, or national origin. A complaint that
42 is submitted to a county attorney shall be submitted to the county attorney in the county in
43 which the alleged unauthorized alien is or was employed by the employer. The county sheriff
44 or any other local law enforcement agency may assist in investigating the complaint. When
45 investigating a complaint, the Attorney General or county attorney shall verify the work
46 authorization of the alleged unauthorized alien with the federal government pursuant to 8
47 U.S.C. § 1373(c). A State, county, or local official shall not attempt to independently make a
48 final determination on whether an alien is authorized to work in the United States. An alien's
49 immigration status or work authorization status shall be verified with the federal government
50 pursuant to 8 U.S.C. § 1373(c). A person who knowingly files a false and frivolous complaint
51 under this subsection is guilty of a Class 2 misdemeanor.

- 1 (c) If, after an investigation, the Attorney General or county attorney determines that
2 the complaint is not false or frivolous:
- 3 (1) The Attorney General or county attorney shall notify the United States
4 Customs and Immigration Enforcement of the presence of the unauthorized
5 alien.
- 6 (2) The Attorney General or county attorney shall notify local law enforcement
7 agencies of the presence of the unauthorized alien.
- 8 (3) The Attorney General shall notify the appropriate county attorney to bring
9 an action pursuant to subsection (d) of this section if the complaint was
10 originally filed with the Attorney General.
- 11 (d) An action for a violation of subsection (a) of this section shall be brought against the
12 employer by the county attorney in the county where the unauthorized alien employee is or was
13 employed by the employer. The county attorney shall not bring an action against any employer
14 for any violation of subsection (a) of this section that occurs before January 1, 2010. A second
15 violation of this section shall be based only on an unauthorized alien who is employed by the
16 employer after an action has been brought for a violation of subsection (a) of this section.
- 17 (e) For a finding of a violation of subsection (a) of this section:
- 18 (1) For a first violation as described in subdivision (3) of this subsection, the
19 court:
- 20 a. Shall order the employer to terminate the employment of all
21 unauthorized aliens.
- 22 b. Shall order the employer to be subject to a three-year probationary
23 period for the business location where the unauthorized alien
24 performed work. During the probationary period, the employer shall
25 file quarterly reports with the county attorney of each new employee
26 who is hired by the employer at the business location where the
27 unauthorized alien performed work.
- 28 c. Shall order the employer to file a signed, sworn affidavit with the
29 county attorney within three business days after the order is issued.
30 The affidavit shall state that the employer has terminated the
31 employment of all unauthorized aliens in this State and that the
32 employer will not intentionally or knowingly employ an
33 unauthorized alien in this State. The court shall order the appropriate
34 agencies to suspend all licenses subject to this subdivision that are
35 held by the employer if the employer fails to file a signed, sworn
36 affidavit with the county attorney within three business days after the
37 order is issued. All licenses that are suspended under this subdivision
38 shall remain suspended until the employer files a signed, sworn
39 affidavit with the county attorney. Notwithstanding any other
40 provision of law, on filing of the affidavit, the suspended licenses
41 shall be reinstated immediately by the appropriate agencies for the
42 purposes of this subdivision. The licenses that are subject to
43 suspension under this subdivision are all licenses that are held by the
44 employer specific to the business location where the unauthorized
45 alien performed work. If the employer does not hold a license
46 specific to the business location where the unauthorized alien
47 performed work, but a license is necessary to operate the employer's
48 business in general, the licenses that are subject to suspension under
49 this subdivision are all licenses that are held by the employer at the
50 employer's primary place of business. On receipt of the court's order
51 and notwithstanding any other provision of law, the appropriate

1 agencies shall suspend the licenses according to the court's order.
2 The court shall send a copy of the court's order to the Attorney
3 General, and the Attorney General shall maintain the copy pursuant
4 to subsection (f) of this section.

5 d. May order the appropriate agencies to suspend all licenses described
6 in sub-subdivision c. of this subdivision that are held by the employer
7 for a period not to exceed 10 business days. The court shall base its
8 decision to suspend under this sub-subdivision on any evidence or
9 information submitted to it during the action for violation of this
10 section and shall consider the following factors, if relevant:

- 11 1. The number of unauthorized aliens employed by the
12 employer.
- 13 2. Any prior misconduct by the employer.
- 14 3. The degree of harm resulting from the violation.
- 15 4. Whether the employer made good faith efforts to comply with
16 any applicable requirements.
- 17 5. The duration of the violation.
- 18 6. The role of the directors, officers, or principals of the
19 employer in the violation.
- 20 7. Any other factors the court deems appropriate.

21 (2) For a second violation as described in subdivision (3) of this subsection, the
22 court shall order the appropriate agencies to permanently revoke all licenses
23 that are held by the employer specific to the business location where the
24 unauthorized alien performed work. If the employer does not hold a license
25 specific to the business location where the unauthorized alien performed
26 work, but a license is necessary to operate the employer's business in
27 general, the court shall order the appropriate agencies to permanently revoke
28 all licenses that are held by the employer at the employer's primary place of
29 business. On receipt of the order and notwithstanding any other provision of
30 law, the appropriate agencies shall immediately revoke the licenses.

31 (3) The violation shall be considered:

- 32 a. A first violation by an employer at a business location if the violation
33 did not occur during a probationary period ordered by the court under
34 this subsection.
- 35 b. A second violation by an employer at a business location if the
36 violation occurred during a probationary period ordered by the court
37 under this subsection.

38 (f) The Attorney General shall maintain copies of court orders that are received
39 pursuant to subsection (e) of this section and shall maintain a database of the employers and
40 business locations that have a first violation of subsection (a) of this section and make the court
41 orders available on the Attorney General's Web site.

42 (g) On determining whether an employee is an unauthorized alien, the court shall
43 consider only the federal government's determination pursuant to 8 U.S.C. § 1373(c). The court
44 may take judicial notice of the federal government's determination and may request the federal
45 government to provide automated or testimonial verification pursuant to 8 U.S.C. § 1373(c).

46 (h) For the purposes of this section, proof of verifying the employment authorization of
47 an employee through the federal work authorization program creates a rebuttable presumption
48 that an employer did not knowingly employ an unauthorized alien.

49 (i) For the purposes of this section, an employer who establishes that it has complied in
50 good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an affirmative defense that
51 the employer did not knowingly employ an unauthorized alien. For purposes of this subsection,

1 an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b)
2 notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the
3 requirements, so long as there is a good faith attempt to comply with the requirements.

4 **"§ 64-23. Article does not require action that is contrary to federal or State law.**

5 This Article shall not be construed to require an employer to take any action that the
6 employer believes in good faith would violate federal or State law.

7 **"§ 64-24. Employers must use federal work authorization program.**

8 After December 31, 2009, every employer, after hiring an employee, shall verify the
9 employment eligibility of the employee through the federal work authorization program.
10 Alternatively, verification may be made through a third party on behalf of an employer where
11 permitted by federal law.

12 **"§ 64-25. Discharge of authorized employee while employer simultaneously employs an**
13 **unauthorized alien is an unfair trade practice.**

14 The discharge of any person lawfully authorized to work in the United States by an
15 employer of this State, who, on the date of the discharge, knowingly employed an unauthorized
16 alien, shall be an unfair trade practice as defined in G.S. 75-1.1, and the discharged employee
17 shall have a right of action under G.S. 75-16."

18
19 **PART V. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

20
21 **SECTION 5.** Article 20 of Chapter 15A of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 15A-407. Enforcement of federal immigration laws.**

24 (a) The Secretary of Crime Control and Public Safety shall negotiate the terms of a
25 memorandum of understanding between the State of North Carolina and the United States
26 Department of Justice or Department of Homeland Security concerning the enforcement of
27 federal immigration and customs laws, detention and removals, and investigations in the State
28 of North Carolina.

29 (b) The memorandum of understanding negotiated pursuant to subsection (a) of this
30 section shall be signed on behalf of the State by the Secretary of Crime Control and Public
31 Safety and the Governor or as otherwise required by the appropriate federal agency.

32 (c) The Secretary of Crime Control and Public Safety shall designate appropriate law
33 enforcement officers to be trained pursuant to the memorandum of understanding provided for
34 in this section. The training shall be funded pursuant to the federal Homeland Security
35 Appropriation Act of 2006, Public Law 109-90, or any subsequent source of federal or State
36 funding.

37 (d) A law enforcement officer certified as trained in accordance with the memorandum
38 of understanding provided for in this section may enforce federal immigration and customs
39 laws while performing duties within the scope of the officer's authorized duties."

40
41 **PART VI. ESTABLISH IMMIGRATION REGISTRATION ASSISTANCE ACT**

42
43 **SECTION 6.** The General Statutes are amended by adding a new Chapter to read:

44 **"Chapter 84B.**

45 **"Immigration Assistance Registration Act.**

46 **"§ 84B-1. Short title.**

47 This Chapter shall be known as the 'Immigration Assistance Registration Act.'

48 **"§ 84B-2. Purpose.**

49 The purpose of this Chapter is to establish and enforce ethical standards for immigration
50 assistance services provided by individuals who are not licensed attorneys.

51 **"§ 84B-3. Definitions.**

1 The following definitions apply in this Chapter:

- 2 (1) Compensation. – A fee, property, services, promise of payment, or anything
3 else of value.
- 4 (2) Employed by. – When a person is on the payroll of an employer and the
5 employer deducts social security and withholding taxes from the employee's
6 paycheck or when a person receives compensation from the employer on a
7 commission basis or as an independent contractor.
- 8 (3) Immigration assistance services. – Any information or action provided or
9 offered to customers or prospective customers related to immigration
10 matters. Immigration assistance services shall not include legal advice
11 recommending a specific course of legal action or providing any other
12 assistance that requires legal analysis, legal judgment, or interpretation of the
13 law.
- 14 (4) Immigration matter. – Any proceeding, filing, or action affecting the
15 nonimmigrant, immigrant, or citizenship status of any person arising under
16 either of the following:
- 17 a. Immigration and naturalization law, an executive order, or
18 presidential proclamation of the United States or any foreign country.
- 19 b. Action of the United States Department of Labor, the United States
20 Department of State, the United States Department of Homeland
21 Security, or the United States Department of Justice.

22 **"§ 84B-4. Registration required.**

23 (a) Any person who provides or offers to provide immigration assistance services in
24 this State shall register with the Secretary of State. The Secretary of State shall keep a registry
25 of all persons providing or offering to provide immigration assistance services, showing for
26 each the date of registration, the registrant's name, the address of the registrant's principal place
27 of business, and the name of the registrant's business or employer, if applicable. The Secretary
28 of State shall maintain the registry, and the registry shall be open to public inspection.

29 (b) The Secretary of State may collect a fee from any person providing immigration
30 assistance services not exempt under this Chapter in an amount not to exceed twenty dollars
31 (\$20.00) to cover the administrative costs associated with establishing and maintaining the
32 registry.

33 (c) Nothing in this Chapter shall regulate any business to the extent that the regulation
34 is prohibited or preempted by federal law.

35 (d) Nothing in this Chapter shall prohibit a local city or county from requiring that a
36 person offering immigration assistance services obtain a business license pursuant to a local
37 ordinance.

38 (e) The Secretary of State may adopt rules to implement, administer, and enforce this
39 Chapter.

40 **"§ 84B-5. Exemptions.**

41 The following persons are exempt from this Chapter:

- 42 (1) An attorney licensed to practice law in this State or an attorney licensed to
43 practice law in any other state or territory of the United States or in any
44 foreign country when acting with the approval of a judge having lawful
45 jurisdiction over an immigration matter.
- 46 (2) A legal intern, clerk, paralegal, or person in a similar position employed by
47 and under the direct supervision of a licensed attorney meeting the
48 requirements in subdivision (1) of this section and providing immigration
49 assistance services.

- 1 (3) A nonprofit organization recognized by the Board of Immigration Appeals
2 under 8 C.F.R. § 292.2(a) and employees of those organizations accredited
3 under 8 C.F.R. § 292.2(d).
- 4 (4) Any organization employing or desiring to employ an alien or nonimmigrant
5 alien, where the organization, its employees, or its agents provide advice or
6 assistance in immigration matters to alien or nonimmigrant alien employees
7 or potential employees without compensation from the individuals to whom
8 the advice or assistance is provided.

9 **"§ 84B-6. Immigration assistance services permitted.**

10 A person providing or offering to provide immigration assistance services may perform the
11 following services only:

- 12 (1) Complete a government agency form requested by the customer if the
13 completion of that form does not involve the use of legal judgment.
- 14 (2) Transcribe responses on a government agency form related to an
15 immigration matter without advising a customer as to his or her answers on
16 the form.
- 17 (3) Translate information on forms for a customer and translate the customer's
18 answers to questions posed on the forms.
- 19 (4) Secure for a customer supporting documents currently in existence, such as a
20 birth certificate or marriage certificate, when needed to submit with
21 government agency forms.
- 22 (5) Translate documents from a foreign language into English.
- 23 (6) Notarize signatures on government agency forms if the person performing
24 the service is a notary public commissioned in this State and is lawfully
25 present in the United States.
- 26 (7) Make referrals, without a fee, to attorneys who represent clients in
27 immigration matters.
- 28 (8) Prepare or arrange for the preparation of photographs and fingerprints.
- 29 (9) Arrange for the performance of medical testing, including X-rays and AIDS
30 tests, and arrange for the test results to be obtained.
- 31 (10) Conduct English language and civics courses.
- 32 (11) Perform any other services the Secretary of State, by rule, deems appropriate
33 pursuant to this Chapter.

34 **"§ 84B-7. Posting signs; advertisements.**

35 (a) Any person providing or offering to provide immigration assistance services who is
36 not exempt under this Chapter shall post signs prominently at his or her place of business which
37 set forth information in English and in every other language in which the person provides or
38 offers to provide immigration assistance services. The signs shall contain the following
39 statement in boldface type and capital letters: 'I AM NOT AN ATTORNEY LICENSED TO
40 PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR
41 LEGAL ADVICE.' Each language in which the person provides or offers to provide
42 immigration assistance services shall be on a separate sign, and each sign shall be at least 12
43 inches by 17 inches.

44 (b) Every person providing immigration assistance service who is not an attorney and
45 advertises immigration assistance services in a language other than English, whether by radio,
46 television, signs, pamphlets, newspapers, or other written communication, with the exception of
47 a single desk plaque, shall include in the document, advertisement, stationery, letterhead,
48 business card, or other comparable written material the following notice in English and the
49 language in which the written communication appears: 'I AM NOT AN ATTORNEY
50 LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT
51 FEES FOR LEGAL ADVICE.' If the notice is in writing, the notice must appear in a

1 conspicuous manner, and if the advertisement is by radio or television, the statement may be
2 modified but must include substantially the same message.

3 **"§ 84B-8. Prohibited conduct.**

4 A person providing immigration assistance services who is not exempt under this Chapter
5 shall not:

- 6 (1) Accept payment in exchange for providing legal advice or any other
7 assistance that requires legal analysis, legal judgment, or interpretation of the
8 law.
- 9 (2) Refuse to return documents supplied by, prepared on behalf of, or paid for
10 by the customer upon the request of the customer. These documents must be
11 returned upon request even if there is a fee dispute between the immigration
12 assistant and the customer.
- 13 (3) Represent, advertise, or use any titles or credentials, including 'notary public'
14 or 'immigration consultant,' while providing assistance in immigration
15 matters that creates the belief that the person possesses special professional
16 skills or is authorized to provide advice on an immigration matter. However,
17 a certified notary public may use the term 'notary public' if the use is
18 accompanied by the statement that the person is not an attorney. The term
19 'notary public' shall not be translated to another language.
- 20 (4) In any document, advertisement, stationery, letterhead, business card, or
21 other comparable written material, literally translate from English into
22 another language terms or titles, including 'notary public,' 'notary,' 'licensed,'
23 'attorney,' 'lawyer,' or any other term that implies the person is an attorney.
- 24 (5) Provide legal advice, recommend a specific course of legal action, or
25 provide any other assistance that requires legal analysis, legal judgment, or
26 interpretation of the law.
- 27 (6) Make any misrepresentation or false statement, directly or indirectly, to
28 influence, persuade, or induce patronage.
- 29 (7) Violate any provision of this Chapter.

30 **"§ 84B-9. Violations; penalties.**

31 (a) Any person who violates any provision of this Chapter shall be guilty of a Class 2
32 misdemeanor for a first offense and a Class 1 misdemeanor for any subsequent offenses
33 committed within five years of a previous conviction for the same offense.

34 (b) Violations of this Chapter may result in a fine of up to one thousand dollars (\$1,000)
35 for each violation. A fine charged pursuant to this Chapter shall not preempt or preclude
36 additional appropriate civil or criminal penalties."

37
38 **PART VII. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**
39 **ILLEGAL IMMIGRANTS**

40
41 **SECTION 7.(a)** G.S. 105-130.2 is amended by adding a new subdivision to read:

42 **"§ 105-130.2. Definitions.**

43 The following definitions apply in this Part:

44 ...

45 (7) Unauthorized alien. – Defined in 8 U.S.C. § 1324a(h)(3)."

46 **SECTION 7.(b)** G.S. 105-130.5(a) is amended by adding a new subdivision to
47 read:

48 "(a) The following additions to federal taxable income shall be made in determining
49 State net income:

50 ...

1 (19) To the extent not included in federal taxable income, any amount in excess
2 of six hundred dollars (\$600.00) that is paid to an unauthorized alien as
3 wages or compensation unless the unauthorized alien is not directly
4 compensated or employed by the taxpayer."

5 **SECTION 7.(c)** G.S. 105-134.1 is amended by adding a new subdivision to read:

6 "**§ 105-134.1. Definitions.**

7 The following definitions apply in this Part:

8 ...

9 (20) Unauthorized alien. – Defined in G.S. 105-130.2."

10 **SECTION 7.(d)** G.S. 105-134.6(c) is amended by adding a new subdivision to
11 read:

12 "(c) Additions. – The following additions to taxable income shall be made in calculating
13 North Carolina taxable income, to the extent each item is not included in taxable income:

14 ...

15 (11) Any amount in excess of six hundred dollars (\$600.00) that is paid to an
16 unauthorized alien as wages or compensation unless the unauthorized alien
17 is not directly compensated or employed by the taxpayer."

18 **SECTION 7.(e)** This section is effective for taxable years beginning on or after
19 January 1, 2010.

20
21 **PART VIII. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL**
22 **IMMIGRANTS**

23
24 **SECTION 8.(a)** G.S. 105-163.1 reads as rewritten:

25 "**§ 105-163.1. Definitions.**

26 The following definitions apply in this Article:

27 (1) Compensation. – Consideration a payer pays a nonresident ~~individual or~~
28 individual, a nonresident entity entity, or an unauthorized alien for personal
29 services performed in this State.

30 (2) Contractor. – ~~Either~~ Any of the following:

31 a. A nonresident individual who performs in this State for
32 compensation other than wages any personal services in connection
33 with a performance, an entertainment, an athletic event, a speech, or
34 the creation of a film, radio, or television program.

35 b. A nonresident entity that provides for the performance in this State
36 for compensation of any personal services in connection with a
37 performance, an entertainment, an athletic event, a speech, or the
38 creation of a film, radio, or television program.

39 c. An unauthorized alien who performs any personal services in this
40 State for compensation other than wages.

41 ...

42 (12a) Unauthorized alien. – Defined in G.S. 105-130.2.

43 "

44 **SECTION 8.(b)** This section becomes effective January 1, 2010, and applies to
45 payment made on or after that date.

46
47 **PART IX. VERIFICATION OF LAWFUL PRESENCE REQUIRED TO RECEIVE**
48 **PUBLIC BENEFITS**

49
50 **SECTION 9.(a)** The General Statutes are amended by adding a new Chapter to
51 read:

"Chapter 135A."Public Benefits."§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

(a) As used in this section:

(1) 'Emergency medical condition.' – As defined in 42 U.S.C.A. § 1396b(v)(3).

(2) 'Federal public benefit.' – As defined in 8 U.S.C.A. § 1611.

(3) 'SAVE'. – Systematic Alien Verification of Entitlement program of the United States Department of Homeland Security.

(4) 'State or local public benefit.' – As defined in 8 U.S.C.A. § 1621.

(b) Except as otherwise provided in subsection (d) of this section or where exempted by federal law, every agency or political subdivision of this State shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for State or local public benefits or for federal public benefits that are administered by an agency or a political subdivision of this State.

(c) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence under this section shall not be required for:

(1) Any purposes for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition of the alien involved and are not related to an organ transplant procedure;

(3) Short-term, noncash, in-kind emergency disaster relief;

(4) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by a communicable disease; or

(5) Programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

a. Deliver in-kind services at the community level, including through public or private nonprofit agencies;

b. Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

c. Are necessary for the protection of life or safety; or

(6) Prenatal care.

(e) Verification of lawful presence in the United States by a State agency or political subdivision required to make verification shall be as follows:

(1) The applicant for public benefit must execute an affidavit that the applicant is a United States citizen or legal permanent resident of the United States and is 18 years of age or older; or

(2) The applicant must execute an affidavit that the applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act and is 18 years of age or older and lawfully present in the United States.

(f) For any applicant who has executed an affidavit that the applicant is an alien lawfully present in the United States, the State agency or political subdivision shall verify eligibility for benefits through the SAVE program operated by the United States Department of

1 Homeland Security or a successor program designated by the United States Department of
2 Homeland Security. Until eligibility verification is made, the affidavit may be presumed to be
3 proof of lawful presence for the purposes of this section.

4 (g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
5 statement of representation in an affidavit executed under subsection (e) of this section shall,
6 upon conviction thereof, be punished as a Class I felon.

7 (h) Agencies or political subdivisions of this State may adopt rules providing for waiver
8 from this section to improve efficiency or reduce delay in the verification process or to provide
9 for adjudication of unique individual circumstances where the verification procedures under
10 this section would impose unusual hardship on a legal resident of this State.

11 (i) It shall be unlawful for any agency or political subdivision of this State to provide
12 any State, local, or federal benefit in violation of this section. Each State or local agency or
13 political subdivision that administers any program of State or local public benefits shall provide
14 an annual report to the General Assembly and the Governor with respect to the agency's or
15 political subdivision's compliance with this section. The report shall be submitted not later than
16 March 1 of each year.

17 (j) All errors and significant delays by SAVE shall be reported by the affected State
18 agency or political subdivision to the United States Department of Homeland Security and to
19 the Secretary of State to ensure that the application of SAVE is not wrongfully denying benefits
20 to legal residents of this State.

21 (k) Notwithstanding subsection (g) of this section, an applicant for federal benefits or
22 for State or local benefits shall not be guilty of any crime for executing an affidavit attesting to
23 lawful presence in the United States that contains a false statement if the affidavit is not
24 required by this section."

25 **SECTION 9.(b)** This section becomes effective January 1, 2010, and applies to
26 applications made and acts committed on or after that date.

27 28 **PART X. CREATE THE CRIME OF UNLAWFUL TRANSFER OR CONCEALMENT** 29 **OF AN ALIEN**

30
31 **SECTION 10.** Article 1 of Chapter 64 of the General Statutes, as created by this
32 act, is amended by adding a new section to read:

33 **"§ 64-6. Unlawful transfer or concealment of an alien.**

34 (a) It is unlawful for a person knowingly or in reckless disregard of the fact that another
35 person has come to, entered, or remained in the United States in violation of law to transport,
36 move, or attempt to transport that person within this State or to solicit or conspire to transport
37 or move that person within the State with intent to further that person's unlawful entry into the
38 United States or avoid apprehension or detection of that person's unlawful immigration status
39 by state or federal authorities. Any person who violates this section shall be guilty of unlawful
40 transfer of an alien, which offense shall be punishable as a Class G felony.

41 (b) It is unlawful for a person to knowingly or in reckless disregard of the fact that
42 another person has come to, entered, or remained in the United States in violation of law to
43 conceal, harbor, or shelter from detection or to solicit or conspire to conceal, harbor, or shelter
44 from detection that person in any place, including a building or means of transportation, with
45 intent to further that person's unlawful entry into the United States or avoid apprehension or
46 detection of that person's unlawful immigration status by state or federal authorities. Any
47 person who violates this section shall be guilty of unlawful concealment of an alien, which
48 offense shall be punishable as a Class G felony.

49 (c) A person who violates, is convicted of, pleads guilty to, or enters into a plea of no
50 contest (nolo contendere) to a violation of this section shall not be granted any professional
51 license offered by the State or any agency or political subdivision of this State.

1 (d) This section shall not apply to either of the following:

2 (1) Programs, services, or assistance (such as soup kitchens, crisis counseling
3 and intervention, and short-term shelter) specified by the United States
4 Attorney General, in the United States Attorney General's sole discretion
5 after consultations with appropriate federal agencies and departments, that
6 do all of the following:

7 a. Deliver in-kind services at the community level, including through
8 public or private nonprofit agencies.

9 b. Do not condition the provision of assistance, the amount of
10 assistance provided, or the cost of assistance provided on the
11 individual recipient's income or resources.

12 c. Are necessary for the protection of life or safety.

13 (2) Shelter provided for strictly humanitarian purposes or provided under the
14 federal Violence Against Women Act, so long as the shelter is not provided
15 in furtherance of or in an attempt to conceal a person's illegal presence in the
16 United States.

17 (3) Churches or other religious institutions that are recognized as 501(c)(3)
18 organizations by the Internal Revenue Service.

19 (e) Providing health care treatment or services to a natural person who is in the United
20 States unlawfully is not a violation of this section."

21
22 **PART XI. EXPAND THE DEFINITION OF IDENTITY THEFT TO INCLUDE**
23 **OBTAINING, POSSESSING, OR USING IDENTIFYING INFORMATION ABOUT**
24 **ANOTHER PERSON WITH THE INTENT TO FRAUDULENTLY OBTAIN**
25 **EMPLOYMENT**

26
27 **SECTION 11.** G.S. 14-113.20(a) reads as rewritten:

28 "(a) A person who knowingly obtains, possesses, or uses identifying information of
29 another person, living or dead, with the intent to fraudulently represent that the person is the
30 other person for ~~the purposes of making financial or credit transactions in the other person's~~
31 ~~name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal~~
32 ~~consequences~~ any of the following purposes is guilty of a felony punishable as provided in
33 ~~G.S. 14-113.22(a).~~ G.S. 14-113.22(a):

34 (1) Making financial or credit transactions in the other person's name.

35 (2) Obtaining anything of value, benefit, or advantage.

36 (3) Avoiding legal consequences.

37 (4) Obtaining employment."

38
39 **PART XII. PRESUMPTION AGAINST PRETRIAL RELEASE OF ILLEGAL ALIENS**

40
41 **SECTION 12.** G.S. 15A-533 reads as rewritten:

42 "**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

43 (a) A defendant charged with any crime, whether capital or noncapital, who is alleged
44 to have committed this crime while still residing in or subsequent to his escape or during an
45 unauthorized absence from involuntary commitment in a mental health facility designated or
46 licensed by the Department of Health and Human Services, and whose commitment is
47 determined to be still valid by the judge or judicial officer authorized to determine pretrial
48 release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the
49 individual shall be returned to the treatment facility in which he was residing at the time of the
50 alleged crime or from which he escaped or absented himself for continuation of his treatment
51 pending the additional proceedings on the criminal offense.

1 (b) A defendant charged with a noncapital offense must have conditions of pretrial
2 release determined, in accordance with G.S. 15A-534.

3 (c) A judge may determine in his discretion whether a defendant charged with a capital
4 offense may be released before trial. If he determines release is warranted, the judge must
5 authorize release of the defendant in accordance with G.S. 15A-534.

6 (d) There shall be a rebuttable presumption that no condition of release will reasonably
7 assure the appearance of the person as required and the safety of the community if a judicial
8 official finds the following:

9 (1) There is reasonable cause to believe that the person committed an offense
10 involving trafficking in a controlled substance;

11 (2) The drug trafficking offense was committed while the person was on pretrial
12 release for another offense; and

13 (3) The person has been previously convicted of a Class A through E felony or
14 an offense involving trafficking in a controlled substance and not more than
15 five years has elapsed since the date of conviction or the person's release
16 from prison for the offense, whichever is later.

17 (e) There shall be a rebuttable presumption that no condition of release will reasonably
18 assure the appearance of the person as required and the safety of the community, if a judicial
19 official finds the following:

20 (1) There is reasonable cause to believe that the person committed an offense for
21 the benefit of, at the direction of, or in association with, any criminal street
22 gang, as defined in G.S. 14-50.16;

23 (2) The offense described in subdivision (1) of this subsection was committed
24 while the person was on pretrial release for another offense; and

25 (3) The person has been previously convicted of an offense described in
26 G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has
27 elapsed since the date of conviction or the person's release for the offense,
28 whichever is later.

29 (f) There shall be a rebuttable presumption that no condition of release will reasonably
30 assure the appearance of the person as required and the safety of the community if the person is
31 not lawfully present in the United States and a judicial official finds that there is reasonable
32 cause to believe that the person committed one or more of the following offenses:

33 (1) A violent felony, as that term is defined in G.S. 14-7.7(b), or any other
34 criminal offense that includes assault as an essential element of the offense
35 or as an aggravating factor in sentencing.

36 (2) A drug offense. As used in this subdivision, a 'drug offense' means a
37 violation of G.S. 90-95.

38 (3) A gang offense. As used in this subdivision, the term 'gang offense' means
39 any violation of Article 13A of Chapter 14 of the General Statutes.

40 Persons who are considered for bond under the provisions of subsections ~~(d) and (e)~~(d), (e), and
41 (f) of this section may only be released by a district or superior court judge upon a finding that
42 there is a reasonable assurance that the person will appear and release does not pose an
43 unreasonable risk of harm to the community."
44

45 **PART XIII. PROHIBIT ILLEGAL ALIENS FROM PUBLIC POSTSECONDARY** 46 **EDUCATION**

47
48 **SECTION 13.(a)** G.S. 115D-1 reads as rewritten:

49 **"§ 15-1. Statement of purpose.**

50 The purposes of this Chapter are to provide for the establishment, organization, and
51 administration of a system of educational institutions throughout the State offering courses of

1 instruction in one or more of the general areas of two-year college parallel, technical,
2 vocational, and adult education programs, to serve as a legislative charter for such institutions,
3 and to authorize the levying of local taxes and the issuing of local bonds for the support thereof.
4 The major purpose of each and every institution operating under the provisions of this Chapter
5 shall be and shall continue to be the offering of vocational and technical education and training,
6 and of basic, high school level, academic education needed in order to profit from vocational
7 and technical education, for students who are lawfully present in the United States and who are
8 high school graduates or who are beyond the compulsory age limit of the public school system
9 and who have left the public schools, provided, juveniles of any age committed to the
10 Department of Juvenile Justice and Delinquency Prevention by a court of competent
11 jurisdiction may, if approved by the director of the youth development center to which they are
12 assigned, take courses offered by institutions of the system if they are otherwise qualified for
13 admission.

14 The Community Colleges System Office is designated as the primary lead agency for
15 delivering workforce development training, adult literacy training, and adult education
16 programs in the State."

17 **SECTION 13.(b)** G.S. 115D-5(a) reads as rewritten:

18 "(a) The State Board of Community Colleges may adopt and execute such policies,
19 regulations and standards concerning the establishment, administration, and operation of
20 institutions as the State Board may deem necessary to insure the quality of educational
21 programs, to promote the systematic meeting of educational needs of the State, and to provide
22 for the equitable distribution of State and federal funds to the several institutions.

23 The State Board of Community Colleges shall establish standards and scales for salaries
24 and allotments paid from funds administered by the State Board, and all employees of the
25 institutions shall be exempt from the provisions of the State Personnel Act. The State Board
26 shall have authority with respect to individual institutions: to approve sites, capital
27 improvement projects, budgets; to approve the selection of the chief administrative officer; to
28 establish and administer standards for professional personnel, curricula, admissions, and
29 graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and
30 regulate student tuition and fees within policies for tuition and fees established by the General
31 Assembly; and to establish and regulate financial accounting procedures.

32 The State Board of Community Colleges shall require all community colleges to meet the
33 faculty credential requirements of the Southern Association of Colleges and Schools for all
34 community college programs.

35 The admissions standards of the State Board of Community Colleges and the admissions
36 standards of all local community colleges shall prohibit the admission of persons who are not
37 lawfully present in the United States, except as otherwise required by federal law."

38 **SECTION 13.(c)** G.S. 116-11 is amended by adding a new subdivision to read:

39 "(8b) The Board of Governors shall adopt an admissions policy that prohibits the
40 admission of any person who is not lawfully present in the United States to
41 any constituent institution in The University of North Carolina, except as
42 otherwise required by federal law."

43 44 **PART XIV. SEVERABILITY CLAUSE**

45
46 **SECTION 14.** If any provision of this act or its application is held invalid, the
47 invalidity does not affect other provisions or applications of this act that can be given effect
48 without the invalid provisions or application, and to this end the provisions of this act are
49 severable.

50 51 **PART XV. EFFECTIVE DATE**

1
2
3

SECTION 15. Except where otherwise provided, this Act becomes effective
January 1, 2010.