

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 398

Short Title: Security and Immigration Compliance. (Public)

Sponsors: Senators Clary; Allran, Apodaca, Berger of Rockingham, Bingham, Blake, Brock, Brown, Brunstetter, East, Forrester, Hunt, Preston, Rucho, and Tillman.

Referred to: Commerce.

March 5, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA SECURITY AND IMMIGRATION
3 COMPLIANCE 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 Security and Immigration Compliance Act." All requirements of this act concerning
12 immigration or the classification of immigration status shall be construed in conformity with
13 federal immigration law.

14
15 **PART II. REQUIRE PUBLIC EMPLOYERS TO REGISTER AND PARTICIPATE IN
16 THE FEDERAL WORK AUTHORIZATION PROGRAM TO VERIFY
17 INFORMATION ON ALL NEW EMPLOYEES**

18
19 **SECTION 2.** Chapter 95 of the General Statutes is amended by adding a new
20 Article to read:

21 "Article 24.

22 "Workplace Immigration Compliance.

23 "**§ 95-280. Definitions.**

24 The following definitions apply in this Article:

- 25 (1) Commissioner. – The Commissioner of the North Carolina Department of
26 Labor.
27 (2) Federal work authorization program. – Any of the electronic verification of
28 work authorization programs operated by the United States Department of
29 Homeland Security or any equivalent federal work authorization program
30 operated by the United States Department of Homeland Security to verify
31 information of newly hired employees, pursuant to the Immigration Reform
32 and Control Act of 1986 (IRCA), Public Law 99-603.
33 (3) Public employer. – Every State agency, department, or institution of the
34 State or any county or incorporated municipality.
35 (4) Subcontractor. – A subcontractor, contract employee, staffing agency, or any
36 contractor.



1 **"§ 95-281. Public employer verification of work authorization.**

2 (a) Every public employer shall register and participate in the federal work
3 authorization program to verify information of all new employees.

4 (b) No public employer shall enter into a contract for the physical performance of
5 services within this State unless the contractor registers and participates in the federal work
6 authorization program to verify information of all new employees.

7 (c) No contractor or subcontractor who enters a contract with a public employer shall
8 enter into such a contract or subcontract in connection with the physical performance of
9 services within the State unless the contractor or subcontractor registers and participates in the
10 federal work authorization program to verify information of all new employees.

11 (d) Subsections (b) and (c) of this section shall apply as follows:

12 (1) Beginning January 1, 2010, with respect to public employers, contractors, or
13 subcontractors employing 500 or more employees.

14 (2) Beginning April 1, 2010, with respect to public employers, contractors, or
15 subcontractors employing 100 or more employees.

16 (3) Beginning July 1, 2010, with respect to all public employers, contractors, or
17 subcontractors.

18 **"§ 95-282. Rule-making authority of Departments of Labor and Transportation.**

19 (a) Except as provided in subsection (b) of this section, the Commissioner shall adopt
20 all rules and prescribe all forms necessary to administer and to effectuate the provisions of this
21 Article and shall post those forms and rules on the official Department of Labor Web site.

22 (b) The Department of Transportation shall adopt rules and prescribe forms deemed
23 necessary for the application of this Article to any contract or agreement relating to public
24 transportation and shall publish the rules and regulations on the official Web site of the North
25 Carolina Department of Transportation.

26 **"§ 95-283. Nondiscrimination in enforcement.**

27 This Article shall be enforced without regard to race, religion, gender, ethnicity, or national
28 origin."

29
30 **PART III. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

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32 **SECTION 3.** Article 20 of Chapter 15A of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 15A-407. Enforcement of federal immigration laws.**

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

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

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

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

PART IV. ESTABLISH IMMIGRATION REGISTRATION ASSISTANCE ACT

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"Chapter 84B.

"Immigration Assistance Registration Act.

"§ 84B-1. Short title.

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

"§ 84B-2. Purpose.

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

"§ 84B-3. Definitions.

The following definitions apply in this Chapter:

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

"§ 84B-4. Registration required.

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

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

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

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

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

"§ 84B-5. Exemptions.

1 The following persons are exempt from this Chapter:

- 2 (1) An attorney licensed to practice law in this State or an attorney licensed to
3 practice law in any other state or territory of the United States or in any
4 foreign country when acting with the approval of a judge having lawful
5 jurisdiction over an immigration matter.
6 (2) A legal intern, clerk, paralegal, or person in a similar position employed by
7 and under the direct supervision of a licensed attorney meeting the
8 requirements in subdivision (1) of this section and providing immigration
9 assistance services.
10 (3) A nonprofit organization recognized by the Board of Immigration Appeals
11 under 8 C.F.R. § 292.2(a) and employees of those organizations accredited
12 under 8 C.F.R. § 292.2(d).
13 (4) Any organization employing or desiring to employ an alien or nonimmigrant
14 alien, where the organization, its employees, or its agents provide advice or
15 assistance in immigration matters to alien or nonimmigrant alien employees
16 or potential employees without compensation from the individuals to whom
17 the advice or assistance is provided.

18 **§ 84B-6. Immigration assistance services permitted.**

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

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

43 **§ 84B-7. Posting signs; advertisements.**

44 (a) Any person providing or offering to provide immigration assistance services who is
45 not exempt under this Chapter shall post signs prominently at his or her place of business that
46 set forth information in English and in every other language in which the person provides or
47 offers to provide immigration assistance services. The signs shall contain the following
48 statement in boldface type and capital letters: 'I AM NOT AN ATTORNEY LICENSED TO
49 PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR
50 LEGAL ADVICE.' Each language in which the person provides or offers to provide

1 immigration assistance services shall be on a separate sign, and each sign shall be at least 12
2 inches by 17 inches.

3 (b) Every person providing immigration assistance services who is not an attorney and
4 advertises immigration assistance services in a language other than English, whether by radio,
5 television, signs, pamphlets, newspapers, or other written communication, with the exception of
6 a single desk plaque, shall include in the document, advertisement, stationery, letterhead,
7 business card, or other comparable written material the following notice in English and the
8 language in which the written communication appears: 'I AM NOT AN ATTORNEY
9 LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT
10 FEES FOR LEGAL ADVICE.' If the notice is in writing, the notice must appear in a
11 conspicuous manner, and if the advertisement is by radio or television, the statement may be
12 modified but must include substantially the same message.

13 **"§ 84B-8. Prohibited conduct.**

14 A person providing immigration assistance services who is not exempt under this Chapter
15 shall not:

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

40 **"§ 84B-9. Violations; penalties.**

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

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

47
48 **PART V. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**
49 **ILLEGAL IMMIGRANTS**

50
51 **SECTION 5.(a)** G.S. 105-130.2 is amended by adding a new subdivision to read:

1 **"§ 105-130.2. Definitions.**

2 The following definitions apply in this Part:

3 ...

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

5 **SECTION 5.(b)** G.S. 105-130.5(a) is amended by adding a new subdivision to
6 read:

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

9 ...

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

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

15 **"§ 105-134.1. Definitions.**

16 The following definitions apply in this Part:

17 ...

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

19 **SECTION 5.(d)** G.S. 105-134.6(c) is amended by adding a new subdivision to
20 read:

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

23 ...

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

27 **SECTION 5.(e)** This section is effective for taxable years beginning on or after
28 January 1, 2010.

29
30 **PART VI. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL**
31 **IMMIGRANTS**

32
33 **SECTION 6.(a)** G.S. 105-163.1 reads as rewritten:

34 **"§ 105-163.1. Definitions.**

35 The following definitions apply in this Article:

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

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

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

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

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

50 ...

51 (12a) Unauthorized alien. – Defined in G.S. 105-130.2.

...."

SECTION 6.(b) This section becomes effective January 1, 2010, and applies to payment made on or after that date.

PART VII. VERIFICATION OF LAWFUL PRESENCE REQUIRED TO RECEIVE PUBLIC BENEFITS

SECTION 7.(a) The General Statutes are amended by adding a new Chapter to 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. § 1396b(v)(3).

(2) Federal public benefit. – As defined in 8 U.S.C. § 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. § 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 (1) The applicant for public benefit must execute an affidavit that the applicant
2 is a United States citizen or legal permanent resident of the United States
3 and is 18 years of age or older; or

4 (2) The applicant must execute an affidavit that the applicant is a qualified alien
5 or nonimmigrant under the federal Immigration and Nationality Act and is
6 18 years of age or older and lawfully present in the United States.

7 (f) For any applicant who has executed an affidavit that the applicant is an alien
8 lawfully present in the United States, the State agency or political subdivision shall verify
9 eligibility for benefits through the SAVE program operated by the United States Department of
10 Homeland Security or a successor program designated by the United States Department of
11 Homeland Security. Until eligibility verification is made, the affidavit may be presumed to be
12 proof of lawful presence for the purposes of this section.

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

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

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

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

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

34 **SECTION 7.(b)** This section becomes effective January 1, 2010, and applies to
35 applications made and acts committed on and after that date.

36 37 **PART VIII. SEVERABILITY CLAUSE**

38
39 **SECTION 8.** If any provision of this act or its application is held invalid, the
40 invalidity does not affect other provisions or applications of this act that can be given effect
41 without the invalid provisions or application, and to this end the provisions of this act are
42 severable.

43 44 **PART IX. EFFECTIVE DATE**

45
46 **SECTION 9.** Except where otherwise provided, this act becomes effective January
47 1, 2010.