

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80556-LLxf-227B* (4/19)

Short Title: Security and Immigration Compliance. (Public)

Sponsors: Representatives Clary, McComas, Moore, and Holloway (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA SECURITY AND
3 IMMIGRATION COMPLIANCE ACT TO PROVIDE FOR THE
4 COMPREHENSIVE REGULATION OF PERSONS IN THIS STATE WHO ARE
5 NOT LAWFULLY PRESENT IN THE UNITED 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
11 Carolina Security and Immigration Compliance Act." All requirements of this act
12 concerning immigration or the classification of immigration status shall be construed in
13 conformity with federal immigration law.

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

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

21 "Article 24.

22 "Workplace Immigration Compliance.

23 "**§ 95-280. Definitions.**

24 The following definitions apply in this section:

25 (1) Commissioner. – The Commissioner of the North Carolina Department
26 of Labor.

- 1 (2) Federal work authorization program. – Any of the electronic
2 verification of work authorization programs operated by the United
3 States Department of Homeland Security or any equivalent federal
4 work authorization program operated by the United States Department
5 of Homeland Security to verify information of newly hired employees,
6 pursuant to the Immigration Reform and Control Act of 1986 (IRCA),
7 D.L. 99-603.
- 8 (3) Public employer. – Every State agency, department, or institution of
9 the State or any local political subdivision of the State.
- 10 (4) Subcontractor. – A subcontractor, contract employee, staffing agency,
11 or any contractor.

12 **"§ 95-281. Public employer verification of work authorization.**

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

15 (b1) No public employer shall enter into a contract for the physical performance of
16 services within this State unless the contractor registers and participates in the federal
17 work authorization program to verify information of all new employees.

18 (b2) No contractor or subcontractor who enters a contract with a public employer
19 shall enter into such a contract or subcontract in connection with the physical
20 performance of services within the State unless the contractor or subcontractor registers
21 and participates in the federal work authorization program to verify information of all
22 new employees.

23 (c) Subsections (b1) and (b2) of this section shall apply as follows:

24 (1) Beginning July 1, 2007, with respect to public employers, contractors,
25 or subcontractors employing 500 or more employees.

26 (2) Beginning July 1, 2008, with respect to public employers, contractors,
27 or subcontractors employing 100 or more employees.

28 (3) Beginning July 1, 2009, with respect to all public employers,
29 contractors, or subcontractors.

30 **"§ 95-282. Rulemaking authority of Departments of Labor and Transportation.**

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

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

39 **"§ 95-283. Nondiscrimination in enforcement.**

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

42

1 **PART III. CREATE CRIMINAL OFFENSE OF TRAFFICKING A PERSON**
2 **FOR SEXUAL SERVITUDE/AMEND OFFENSE OF INVOLUNTARY**
3 **SERVITUDE**
4

5 **SECTION 3.(a)** Article 10 of Chapter 14 of the General Statutes is amended
6 by adding a new section to read:

7 **"§ 14-43.4. Trafficking a person for sexual servitude.**

8 (a) The following definitions apply in this section:

9 (1) Coercion. – The term includes all of the following:

- 10 a. Causing or threatening to cause bodily harm to any person,
11 physically restraining or confining any person, or threatening to
12 physically restrain or confine any person.
13 b. Exposing or threatening to expose any fact or information that
14 if revealed would tend to subject a person to criminal or
15 immigration proceedings, hatred, contempt, or ridicule.
16 c. Destroying, concealing, removing, confiscating, or possessing
17 any actual or purported passport or other immigration
18 document, or any other actual or purported government
19 identification document, of any person.
20 d. Providing a controlled substance, as defined by G.S. 90-87, to a
21 person.

22 (2) Deception. – The term includes all of the following:

- 23 a. Creating or confirming another's impression of an existing fact
24 or past event which is false and which the accused knows or
25 believes to be false.
26 b. Maintaining the status or condition of a person arising from a
27 pledge by that person of his or her personal services as security
28 for a debt, if the value of those services as reasonably assessed
29 is not applied toward the liquidation of the debt or the length
30 and nature of those services are not respectively limited and
31 defined, or preventing a person from acquiring information
32 pertinent to the disposition of the debt.
33 c. Promising benefits or the performance of services that the
34 accused does not intend to deliver or perform or knows will not
35 be delivered or performed.

36 (3) Minor. – A person who is less than 18 years of age.

37 (4) Sexual servitude. – The term includes the following:

- 38 a. Any sexual activity as defined in G.S. 14-190.13 for which
39 anything of value is directly or indirectly given, promised to, or
40 received by any person, which conduct is induced or obtained
41 by coercion or deception or which conduct is induced or
42 obtained from a person under the age of 18 years; or
43 b. Any sexual activity as defined in G.S. 14-190.13 which is
44 performed or provided by any person, which conduct is induced

1 or obtained by coercion or deception or which conduct is
2 induced or obtained from a person under the age of 18 years.

3 (b) A person commits the offense of trafficking a person for sexual servitude
4 when that person knowingly subjects or maintains another in sexual servitude or
5 knowingly recruits, entices, harbors, transports, provides, or obtains by any means
6 another person for the purpose of sexual servitude.

7 (c) A person who violates this section is guilty of a Class F felony if the victim of
8 the offense is an adult. A person who violates this section is guilty of a Class E felony if
9 the victim of the offense is a minor.

10 (d) Each violation of this section constitutes a separate offense and shall not
11 merge with any other offense. Evidence of failure to deliver benefits or perform services
12 standing alone shall not be sufficient to authorize a conviction under this section."

13 **SECTION 3.(b)** G.S. 14-43.2 reads as rewritten:

14 **"§ 14-43.2. Involuntary servitude.**

15 (a) ~~As used in this section, "involuntary servitude" means the unlawful holding~~
16 ~~of a person against his will:~~

17 ~~(1) For the performance of labor, whether or not for compensation, or~~
18 ~~whether or not for the satisfaction of a debt, and~~

19 ~~(2) By coercion or intimidation using violence or the threat of violence, or~~
20 ~~by any other means of coercion or intimidation~~

21 (a) The following definitions apply in this section:

22 (1) Deception. – The term includes all of the following:

23 a. Creating or confirming another's impression of an existing fact
24 or past event which is false and which the accused knows or
25 believes to be false.

26 b. Maintaining the status or condition of a person arising from a
27 pledge by that person of his or her personal services as security
28 for a debt, if the value of those services as reasonably assessed
29 is not applied toward the liquidation of the debt or the length
30 and nature of those services are not respectively limited and
31 defined, or preventing a person from acquiring information
32 pertinent to the disposition of such debt.

33 c. Promising benefits or the performance of services which the
34 accused does not intend to deliver or perform or knows will not
35 be delivered or performed.

36 (2) Involuntary servitude. – The unlawful holding of a person against the
37 person's will:

38 a. For the performance of labor, whether or not for compensation,
39 or whether or not for the satisfaction of a debt; and

40 b. By deception, coercion, or intimidation using violence or the
41 threat of violence or by any other means of coercion or
42 intimidation. Other means of coercion or intimidation include
43 all of the following:

- 1 1. Exposing or threatening to expose any fact or
2 information that if revealed would tend to subject a
3 person to criminal or immigration proceedings, hatred,
4 contempt, or ridicule.
- 5 2. Destroying, concealing, removing, confiscating, or
6 possessing any actual or purported passport or other
7 immigration document, or any other actual or purported
8 government identification document, of any person; or
9 3. Providing a controlled substance, defined by G.S. 90-87,
10 to the person.

11 (3) Minor. – A person who is less than 18 years of age.

12 (b) It is unlawful to knowingly and willfully:

13 (1) Hold another in involuntary servitude, or

14 (2) Entice, persuade or induce another to go to another place with the
15 intent that the other be held in involuntary servitude.

16 A person violating this subsection shall be guilty of a Class F ~~felony~~. felony if the
17 victim of the offense is an adult. A person violating this subsection shall be guilty of a
18 Class E felony if the victim of the offense is a minor.

19 (b1) Each violation of this section constitutes a separate offense and shall not
20 merge with any other offense. Evidence of failure to deliver benefits or perform services
21 standing alone shall not be sufficient to authorize a conviction under this section.

22 (c) Nothing in this section shall be construed to affect the laws governing the
23 relationship between an unemancipated minor and his parents or legal guardian.

24 (d) If any person reports a violation of subsection (b) of this section, which
25 violation arises out of any contract for labor, to any party to the contract, the party shall
26 immediately report the violation to the sheriff of the county in which the violation is
27 alleged to have occurred, for appropriate action. A person violating this subsection shall
28 be guilty of a Class 1 misdemeanor."

29 **SECTION 3.(c)** G.S. 14-39(a) is amended by adding a new subdivision to
30 read:

31 "(a) Any person who shall unlawfully confine, restrain, or remove from one place
32 to another, any other person 16 years of age or over without the consent of such person,
33 or any other person under the age of 16 years without the consent of a parent or legal
34 custodian of such person, shall be guilty of kidnapping if such confinement, restraint or
35 removal is for the purpose of:

36 (1) Holding such other person for a ransom or as a hostage or using such
37 other person as a shield; or

38 (2) Facilitating the commission of any felony or facilitating flight of any
39 person following the commission of a felony; or

40 (3) Doing serious bodily harm to or terrorizing the person so confined,
41 restrained or removed or any other person; or

42 (4) Holding such other person in involuntary servitude in violation of
43 G.S. 14-43.2.

1 (5) Trafficking the person for sexual servitude in violation of
2 G.S. 14-43.4."

3 **SECTION 3.(d)** G.S. 15A-830(a)(7) reads as rewritten:

4 "(a) The following definitions apply in this Article:

5 ...

6 (7) Victim. – A person against whom there is probable cause to believe
7 one of the following crimes was committed:

8 a. A Class A, B1, B2, C, D, or E felony.

9 b. A Class F felony if it is a violation of one of the following:
10 G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3);
11 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2;
12 14-43.3; 14-43.4; 14-190.17; 14-190.19; 14-202.1; 14-277.3;
13 14-288.9; or 20-138.5.

14 c. A Class G felony if it is a violation of one of the following:
15 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

16 d. A Class H felony if it is a violation of one of the following:
17 G.S. 14-32.3(a); 14-32.3(c); 14-33.2, or 14-277.3.

18 e. A Class I felony if it is a violation of one of the following:
19 G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

20 f. An attempt of any of the felonies listed in this subdivision if the
21 attempted felony is punishable as a felony.

22 g. Any of the following misdemeanor offenses when the offense is
23 committed between persons who have a personal relationship as
24 defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2);
25 14-33(a); 14-34; 14-134.3; or 14-277.3."

26 **SECTION 3.(e)** This section becomes effective December 1, 2006, and
27 applies to offenses committed on or after that date.

28
29 **PART IV. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION**
30 **LAWS**

31
32 **SECTION 4.** Article 20 of Chapter 15A of the General Statutes is amended
33 by adding a new section to read:

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

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

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

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

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

10
11 **PART V. DETERMINATION OF NATIONALITY AND IMMIGRATION**
12 **STATUS OF PERSONS JAILED UPON FELONY OR IMPAIRED DRIVING**
13 **CHARGES**

14
15 **SECTION 5.** Chapter 162 of the General Statutes is amended by adding a
16 new section to read:

17 **"§ 162-62. Legal status of prisoners.**

18 (a) When any person charged with a felony or an impaired driving offense is
19 confined for any period in a county jail, local confinement facility, district confinement
20 facility, or satellite jail/work release unit, the administrator or other person in charge of
21 the facility shall make a reasonable effort to determine the nationality of the person so
22 confined.

23 (b) If the prisoner is a foreign national, the administrator or other person in
24 charge of the facility holding the prisoner shall make a reasonable effort to verify that
25 the prisoner has been lawfully admitted to the United States and if lawfully admitted,
26 that the prisoner's lawful status has not expired. If verification of lawful status cannot be
27 made from documents in the possession of the prisoner, verification shall be made
28 within 48 hours through a query to the Law Enforcement Support Center (LESC) of the
29 United States Department of Homeland Security or other office or agency designated
30 for that purpose by the United States Department of Homeland Security. If the LESL or
31 other office or agency determines that the prisoner has not been lawfully admitted to the
32 United States, the administrator or other person in charge of the facility holding the
33 prisoner shall notify the United States Department of Homeland Security.

34 (c) Nothing in this section shall be construed to deny bond to a person or to
35 prevent a person from being released from confinement when that person is otherwise
36 eligible for release.

37 (d) The Department of Crime Control and Public Safety, after consultation with
38 the North Carolina Sheriffs' Association, shall prepare and issue guidelines and
39 procedures to be used to comply with the provisions of this section."

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

42
43 **SECTION 6.** The General Statutes are amended by adding a new Chapter to
44 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.

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

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

6 **"§ 84B-5. Exemptions.**

7 The following persons are exempt from this Chapter:

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

25 **"§ 84B-6. Immigration assistance services permitted.**

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

- 28 (1) Complete a government agency form requested by the customer if the
29 completion of that form does not involve the use of legal judgment.
- 30 (2) Transcribe responses on a government agency form related to an
31 immigration matter without advising a customer as to his or her
32 answers on the form.
- 33 (3) Translate information on forms for a customer and translate the
34 customer's answers to questions posed on the forms.
- 35 (4) Secure for a customer supporting documents currently in existence,
36 such as a birth certificate or marriage certificate, when needed to
37 submit with government agency forms.
- 38 (5) Translate documents from a foreign language into English.
- 39 (6) Notarize signatures on government agency forms if the person
40 performing the service is a notary public commissioned in this State
41 and is lawfully present in the United States.
- 42 (7) Make referrals, without a fee, to attorneys who represent clients in
43 immigration matters.
- 44 (8) Prepare or arrange for the preparation of photographs and fingerprints.

- 1 (9) Arrange for the performance of medical testing, including X-rays and
2 AIDS tests, and arrange for the test results to be obtained.
3 (10) Conduct English language and civics courses.
4 (11) Perform any other services the Secretary of State, by rule, deems
5 appropriate pursuant to this Chapter.

6 **"§ 84B-7. Posting signs; advertisements.**

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

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

27 **"§ 84B-8. Prohibited conduct.**

28 A person providing immigration assistance services who is not exempt under this
29 Chapter shall not:

- 30 (1) Accept payment in exchange for providing legal advice or any other
31 assistance that requires legal analysis, legal judgment, or interpretation
32 of the law.
33 (2) Refuse to return documents supplied by, prepared on behalf of, or paid
34 for by the customer upon the request of the customer. These
35 documents must be returned upon request even if there is a fee dispute
36 between the immigration assistant and the customer.
37 (3) Represent, advertise, or use any titles or credentials, including 'notary
38 public' or 'immigration consultant', while providing assistance in
39 immigration matters that creates the belief that the person possesses
40 special professional skills or is authorized to provide advice on an
41 immigration matter. However, a certified notary public may use the
42 term 'notary public' if the use is accompanied by the statement that the
43 person is not an attorney. The term 'notary public' shall not be
44 translated to another language.

- (4) In any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles, including 'notary public', 'notary', 'licensed', 'attorney', 'lawyer', or any other term that implies the person is an attorney.
- (5) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law.
- (6) Make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.
- (7) Violate any provision of this Chapter.

"§ 84B-9. Violations; penalties.

- (a) Any person who violates any provision of this Chapter shall be guilty of a Class 2 misdemeanor for a first offense and a Class 1 misdemeanor for any subsequent offenses committed within five years of a previous conviction for the same offense.
- (b) Violations of this Chapter may result in a fine of up to one thousand dollars (\$1,000) for each violation. A fine charged pursuant to this Chapter shall not preempt or preclude additional appropriate civil or criminal penalties."

PART VII. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO ILLEGAL IMMIGRANTS

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

"§ 105-130.2. Definitions.

The following definitions apply in this Part:

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

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

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

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

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

"§ 105-134.1. Definitions.

The following definitions apply in this Part:

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

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

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

6 ...

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

11 **SECTION 7.(e)** This section is effective for taxable years beginning on or
12 after January 1, 2007.

13
14 **PART VIII. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL**
15 **IMMIGRANTS**

16
17 **SECTION 8.(a)** G.S. 105-163.1 reads as rewritten:

18 **"§ 105-163.1. Definitions.**

19 The following definitions apply in this Article:

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

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

24 a. A nonresident individual who performs in this State for
25 compensation other than wages any personal services in
26 connection with a performance, an entertainment, an athletic
27 event, a speech, or the creation of a film, radio, or television
28 program.

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

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

35 ...

36 (12a) Unauthorized alien. – Defined in G.S. 105-130.2.

37 ..."

38 **SECTION 8.(b)** This section becomes effective January 1, 2007, and applies
39 to payment made on or after that date.

40
41 **PART IX. VERIFICATION OF LAWFUL PRESENCE TO RECEIVE PUBLIC**
42 **BENEFITS**

1 (7) Postsecondary education, whereby the Board of Governors of The
2 University of North Carolina, or the State Board of Community
3 Colleges shall set forth, or cause to be set forth, policies regarding
4 postsecondary benefits that comply with all federal law including
5 federal public benefits and State and local public benefits.

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

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

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

15 (f) For any applicant who has executed an affidavit that the applicant is an alien
16 lawfully present in the United States, the state agency or political subdivision shall
17 verify eligibility for benefits through the SAVE program operated by the United States
18 Department of Homeland Security or a successor program designated by the United
19 States Department of Homeland Security. Until eligibility verification is made, the
20 affidavit may be presumed to be proof of lawful presence for the purposes of this
21 section.

22 (g) Any person who knowingly and willfully makes a false, fictitious, or
23 fraudulent statement of representation in an affidavit executed under subsection (e) of
24 this section shall, upon conviction thereof, be punished by a fine of not more than one
25 thousand dollars (\$1,000) or by imprisonment for one to five years, or both.

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

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

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

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

1 **SECTION 9.(b)** This section becomes effective January 1, 2007, and applies
2 to applications made and acts committed on and after that date.

3
4 **PART X. SEVERABILITY CLAUSE**

5
6 **SECTION 10.** If any provision of this act or its application is held invalid,
7 the invalidity does not affect other provisions or applications of this act that can be
8 given effect without the invalid provisions or application, and to this end the provisions
9 of this act are severable.

10
11 **PART XI. EFFECTIVE DATE**

12
13 **SECTION 11.** Except as otherwise provided in this section, this act becomes
14 effective January 1, 2007.