

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 1627

Short Title: Security and Immigration Compliance. (Public)

Sponsors: Senators Forrester, Goodall; Allran; Berger of Rockingham, Jacumin, and Presnell.

Referred to: Rules and Operations of the Senate.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA SECURITY AND IMMIGRATION COMPLIANCE ACT TO PROVIDE FOR THE COMPREHENSIVE REGULATION OF PERSONS IN THIS STATE WHO ARE NOT LAWFULLY PRESENT IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act shall be known and may be cited as the "North Carolina Security and Immigration Compliance Act." All requirements of this act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.

PART II. REQUIRE PUBLIC EMPLOYERS TO REGISTER AND PARTICIPATE IN THE FEDERAL WORK AUTHORIZATION PROGRAM TO VERIFY INFORMATION ON ALL NEW EMPLOYEES AND ESTABLISH PENALTIES FOR VIOLATION OF THOSE REQUIREMENTS

SECTION 2.(a) Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 24.

"Workplace Immigration Compliance.

§ 95-280. Definitions.

The following definitions apply in this section:

(1) Commissioner. – The Commissioner of the North Carolina Department 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. Rule-making 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 **"§ 95-284. Penalties.**

43 It shall be unlawful for any person to violate any provision of this Article. Each
44 violation shall constitute a distinct and separate offense. The first violation of this

1 Article shall constitute a Class 2 misdemeanor. The second violation of this Article shall
2 constitute a Class 1 misdemeanor. The third, and any subsequent, violation of this
3 Article shall constitute a Class I felony."

4 **SECTION 2.(b)** Subsection (b) of this section becomes effective January 1,
5 2007, and applies to offenses occurring on or after that date.

6
7 **PART III. CREATE CRIMINAL OFFENSE OF TRAFFICKING A PERSON**
8 **FOR SEXUAL SERVITUDE/AMEND OFFENSE OF INVOLUNTARY**
9 **SERVITUDE**

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

13 **"§ 14-43.4. Trafficking a person for sexual servitude.**

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

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

16 a. Causing or threatening to cause bodily harm to any person,
17 physically restraining or confining any person, or threatening to
18 physically restrain or confine any person.

19 b. Exposing or threatening to expose any fact or information that
20 if revealed would tend to subject a person to criminal or
21 immigration proceedings, hatred, contempt, or ridicule.

22 c. Destroying, concealing, removing, confiscating, or possessing
23 any actual or purported passport or other immigration
24 document, or any other actual or purported government
25 identification document, of any person.

26 d. Providing a controlled substance, as defined by G.S. 90-87, to a
27 person.

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

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

32 b. Maintaining the status or condition of a person arising from a
33 pledge by that person of his or her personal services as security
34 for a debt, if the value of those services as reasonably assessed
35 is not applied toward the liquidation of the debt or the length
36 and nature of those services are not respectively limited and
37 defined, or preventing a person from acquiring information
38 pertinent to the disposition of the debt.

39 c. Promising benefits or the performance of services that the
40 accused does not intend to deliver or perform or knows will not
41 be delivered or performed.

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

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

- 1 a. Any sexual activity as defined in G.S. 14-190.13 for which
2 anything of value is directly or indirectly given, promised to, or
3 received by any person, which conduct is induced or obtained
4 by coercion or deception or which conduct is induced or
5 obtained from a person under the age of 18 years; or
6 b. Any sexual activity as defined in G.S. 14-190.13 which is
7 performed or provided by any person, which conduct is induced
8 or obtained by coercion or deception or which conduct is
9 induced or obtained from a person under the age of 18 years.

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

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

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

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

21 **"§ 14-43.2. Involuntary servitude.**

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

- 24 (1) ~~For the performance of labor, whether or not for compensation, or~~
25 ~~whether or not for the satisfaction of a debt, and~~
26 (2) ~~By coercion or intimidation using violence or the threat of violence, or~~
27 ~~by any other means of coercion or intimidation.~~

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

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

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

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

- 1 a. For the performance of labor, whether or not for compensation,
2 or whether or not for the satisfaction of a debt; and
3 b. By deception, coercion, or intimidation using violence or the
4 threat of violence or by any other means of coercion or
5 intimidation. Other means of coercion or intimidation include
6 all of the following:
7 1. Exposing or threatening to expose any fact or
8 information that if revealed would tend to subject a
9 person to criminal or immigration proceedings, hatred,
10 contempt, or ridicule.
11 2. Destroying, concealing, removing, confiscating, or
12 possessing any actual or purported passport or other
13 immigration document, or any other actual or purported
14 government identification document, of any person; or
15 3. Providing a controlled substance, defined by G.S. 90-87,
16 to the person.

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

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

19 (1) Hold another in involuntary servitude, or

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

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

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

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

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

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

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

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

- 1 (2) Facilitating the commission of any felony or facilitating flight of any
2 person following the commission of a felony; or
3 (3) Doing serious bodily harm to or terrorizing the person so confined,
4 restrained or removed or any other person; or
5 (4) Holding such other person in involuntary servitude in violation of
6 ~~G.S. 14-43.2.~~ G.S. 14-43.2; or
7 (5) Trafficking the person for sexual servitude in violation of
8 G.S. 14-43.4."

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

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

- 11 ...
- 12 (7) Victim. – A person against whom there is probable cause to believe
13 one of the following crimes was committed:
- 14 a. A Class A, B1, B2, C, D, or E felony.
15 b. A Class F felony if it is a violation of one of the following:
16 G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3);
17 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2;
18 14-43.3; 14-43.4; 14-190.17; 14-190.19; 14-202.1; 14-277.3;
19 14-288.9; or 20-138.5.
20 c. A Class G felony if it is a violation of one of the following:
21 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
22 d. A Class H felony if it is a violation of one of the following:
23 G.S. 14-32.3(a); 14-32.3(c); 14-33.2, or 14-277.3.
24 e. A Class I felony if it is a violation of one of the following:
25 G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.
26 f. An attempt of any of the felonies listed in this subdivision if the
27 attempted felony is punishable as a felony.
28 g. Any of the following misdemeanor offenses when the offense is
29 committed between persons who have a personal relationship as
30 defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2);
31 14-33(a); 14-34; 14-134.3; or 14-277.3."

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

34
35 **PART IV. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION**
36 **LAWS**

37
38 **SECTION 4.** Article 20 of Chapter 15A of the General Statutes is amended
39 by adding a new section to read:

40 "**§ 15A-407. Enforcement of federal immigrations laws.**

41 (a) The Secretary of Crime Control and Public Safety shall negotiate the terms of
42 a memorandum of understanding between the State of North Carolina and the United
43 States Department of Justice or Department of Homeland Security concerning the

1 enforcement of federal immigration and customs laws, detention and removals, and
2 investigations in the State of North Carolina.

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

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

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

16
17 **PART V. DETERMINATION OF NATIONALITY AND IMMIGRATION**
18 **STATUS OF PERSONS JAILED UPON FELONY OR IMPAIRED DRIVING**
19 **CHARGES**

20
21 **SECTION 5.** Chapter 162 of the General Statutes is amended by adding a
22 new section to read:

23 **"§ 162-62. Legal status of prisoners.**

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

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

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

1 employer, if applicable. The Secretary of State shall maintain the registry, and the
2 registry shall be open to public inspection.

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

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

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

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

14 **"§ 84B-5. Exemptions.**

15 The following persons are exempt from this Chapter:

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

33 **"§ 84B-6. Immigration assistance services permitted.**

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

- 36 (1) Complete a government agency form requested by the customer if the
37 completion of that form does not involve the use of legal judgment.
- 38 (2) Transcribe responses on a government agency form related to an
39 immigration matter without advising a customer as to his or her
40 answers on the form.
- 41 (3) Translate information on forms for a customer and translate the
42 customer's answers to questions posed on the forms.

- 1 (4) Secure for a customer supporting documents currently in existence,
2 such as a birth certificate or marriage certificate, when needed to
3 submit with government agency forms.
- 4 (5) Translate documents from a foreign language into English.
- 5 (6) Notarize signatures on government agency forms if the person
6 performing the service is a notary public commissioned in this State
7 and is lawfully present in the United States.
- 8 (7) Make referrals, without a fee, to attorneys who represent clients in
9 immigration matters.
- 10 (8) Prepare or arrange for the preparation of photographs and fingerprints.
- 11 (9) Arrange for the performance of medical testing, including X-rays and
12 AIDS tests, and arrange for the test results to be obtained.
- 13 (10) Conduct English language and civics courses.
- 14 (11) Perform any other services the Secretary of State, by rule, deems
15 appropriate pursuant to this Chapter.

16 **"§ 84B-7. Posting signs; advertisements.**

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

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

37 **"§ 84B-8. Prohibited conduct.**

38 A person providing immigration assistance services who is not exempt under this
39 Chapter shall not:

- 40 (1) Accept payment in exchange for providing legal advice or any other
41 assistance that requires legal analysis, legal judgment, or interpretation
42 of the law.
- 43 (2) Refuse to return documents supplied by, prepared on behalf of, or paid
44 for by the customer upon the request of the customer. These

1 documents must be returned upon request even if there is a fee dispute
2 between the immigration assistant and the customer.

3 (3) Represent, advertise, or use any titles or credentials, including 'notary
4 public' or 'immigration consultant', while providing assistance in
5 immigration matters that create the belief that the person possesses
6 special professional skills or is authorized to provide advice on an
7 immigration matter. However, a certified notary public may use the
8 term 'notary public' if the use is accompanied by the statement that the
9 person is not an attorney. The term 'notary public' shall not be
10 translated to another language.

11 (4) In any document, advertisement, stationery, letterhead, business card,
12 or other comparable written material, literally translate from English
13 into another language terms or titles, including 'notary public', 'notary',
14 'licensed', 'attorney', 'lawyer', or any other term that implies the person
15 is an attorney.

16 (5) Provide legal advice, recommend a specific course of legal action, or
17 provide any other assistance that requires legal analysis, legal
18 judgment, or interpretation of the law.

19 (6) Make any misrepresentation or false statement, directly or indirectly,
20 to influence, persuade, or induce patronage.

21 (7) Violate any provision of this Chapter.

22 **"§ 84B-9. Violations; penalties.**

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

26 (b) Violations of this Chapter may result in a fine of up to one thousand dollars
27 (\$1,000) for each violation. A fine charged pursuant to this Chapter shall not preempt or
28 preclude additional appropriate civil or criminal penalties."

29
30 **PART VII. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**
31 **ILLEGAL IMMIGRANTS**

32
33 **SECTION 7.(a)** G.S. 105-130.2 is amended by adding a new subdivision to
34 read:

35 **"§ 105-130.2. Definitions.**

36 The following definitions apply in this Part:

37 ...

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

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

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

43 ...

(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) 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."

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

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

...

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

PART VIII. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL IMMIGRANTS

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

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

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

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

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

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

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

...

1 (12a) Unauthorized alien. – Defined in G.S. 105-130.2.

2 ..."

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

5
6 **PART IX. VERIFICATION OF LAWFUL PRESENCE TO RECEIVE PUBLIC**
7 **BENEFITS**

8
9 **SECTION 9.(a)** The General Statutes are amended to add a new Chapter to
10 read:

11 **"Chapter 135A.**

12 **"Public Benefits.**

13 **"§ 135A-1. Verification of lawful presence required to receive public benefits;**
14 **definitions; exceptions.**

15 (a) As used in this section,

16 (1) 'Emergency medical condition.' – As defined in 42 U.S.C.A. §
17 1396b(v)(3).

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

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

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

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

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

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

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

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

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

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

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

- 1 a. Deliver in-kind services at the community level, including
2 through public or private nonprofit agencies;
3 b. Do not condition the provision of assistance, the amount of
4 assistance provided, or the cost of assistance provided on the
5 individual recipient's income or resources; and
6 c. Are necessary for the protection of life or safety.
7 (6) Prenatal care; or
8 (7) Postsecondary education, whereby the Board of Governors of The
9 University of North Carolina, or the State Board of Community
10 Colleges shall set forth, or cause to be set forth, policies regarding
11 postsecondary benefits that comply with all federal law including
12 federal public benefits and State and local public benefits.
13 (e) Verification of lawful presence in the United States by a State agency or
14 political subdivision required to make verification shall be as follows:
15 (1) The applicant for public benefit must execute an affidavit that the
16 applicant is a United States citizen or legal permanent resident of the
17 United States and is 18 years of age or older; or
18 (2) The applicant must execute an affidavit that the applicant is a qualified
19 alien or nonimmigrant under the federal Immigration and Nationality
20 Act and is 18 years of age or older and lawfully present in the United
21 States.
22 (f) For any applicant who has executed an affidavit that the applicant is an alien
23 lawfully present in the United States, the State agency or political subdivision shall
24 verify eligibility for benefits through the SAVE program operated by the United States
25 Department of Homeland Security or a successor program designated by the United
26 States Department of Homeland Security. Until eligibility verification is made, the
27 affidavit may be presumed to be proof of lawful presence for the purposes of this
28 section.
29 (g) Any person who knowingly and willfully makes a false, fictitious, or
30 fraudulent statement of representation in an affidavit executed under subsection (e) of
31 this section shall, upon conviction thereof, be punished by a fine of not more than one
32 thousand dollars (\$1,000) or by imprisonment for one to five years, or both.
33 (h) Agencies or political subdivisions of this State may adopt rules providing for
34 waiver from this section to improve efficiency or reduce delay in the verification
35 process or to provide for adjudication of unique individual circumstances where the
36 verification procedures under this section would impose unusual hardship on a legal
37 resident of this State.
38 (i) It shall be unlawful for any agency or political subdivision of this State to
39 provide any State, local, or federal benefit in violation of this section. Each State or
40 local agency or political subdivision that administers any program of State or local
41 public benefits shall provide an annual report to the General Assembly and the
42 Governor with respect to the agency's or political subdivision's compliance with this
43 section. The report shall be submitted not later than March 1 of each year.

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

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

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

11
12 **PART X. SEVERABILITY CLAUSE**

13
14 **SECTION 10.** If any provision of this act or its application is held invalid,
15 the invalidity does not affect other provisions or applications of this act that can be
16 given effect without the invalid provisions or application, and to this end the provisions
17 of this act are severable.

18
19 **PART XI. EFFECTIVE DATE**

20
21 **SECTION 11.** Except as otherwise provided in this section, this act becomes
22 effective January 1, 2007.