

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE DRS35117-MDx-28 (2/28)

Short Title: Restrict Contracts & Benefits/Illegal Aliens. (Public)

Sponsors: Senator Pittenger.

Referred to:

A BILL TO BE ENTITLED

AN ACT DISALLOWING ECONOMIC DEVELOPMENT INCENTIVES TO COMPANIES THAT EMPLOY UNAUTHORIZED ALIENS; REQUIRING STATE AGENCIES AND POLITICAL SUBDIVISIONS OF THE STATE TO VERIFY THE LAWFUL PRESENCE OF ALL APPLICANTS FOR PUBLIC ASSISTANCE THAT ARE EIGHTEEN YEARS OF AGE OR OLDER; AND PROHIBITING STATE AND LOCAL GOVERNMENT CONTRACTS WITH CONTRACTORS WHO EMPLOY ILLEGAL IMMIGRANTS.

The General Assembly of North Carolina enacts:

PART I. DISALLOWING ECONOMIC DEVELOPMENT INCENTIVES TO COMPANIES THAT EMPLOY UNAUTHORIZED ALIENS.

SECTION 1. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(b) Definitions. – The following definitions apply in this Article:

...

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

SECTION 2. G.S. 105-129.4 is amended by adding a new subsection to read:

"(b8) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer first claims the credit and each year it claims an installment or carryforward of a credit, that the taxpayer employs no unauthorized aliens at the establishment with respect to which the credit is claimed. If a taxpayer employs an unauthorized alien at the establishment with respect to which the credit is claimed, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit."

1 **SECTION 3.** G.S. 105-129.16E is amended by adding a new subsection to
2 read:

3 "(c1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
4 section only if the taxpayer certifies that, as of the time the taxpayer first claims the
5 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
6 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
7 taxpayer employs an unauthorized alien at the establishment with respect to which the
8 credit is claimed, the credit expires and the taxpayer may not take any remaining
9 carryforward of the credit."

10 **SECTION 4.** G.S. 105-129.26 is amended by adding a new subsection to
11 read:

12 "(b1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
13 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
14 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
15 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
16 taxpayer employs an unauthorized alien at the establishment with respect to which the
17 credit is claimed, the credit expires and the taxpayer may not take any remaining
18 carryforward of the credit."

19 **SECTION 5.** G.S. 105-129.51(a) reads as rewritten:

20 "(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the
21 requirements of G.S. 105-129.83(c), (d), (e), ~~and (f)–(f)~~, and (g1) relating to wage
22 standard, health insurance, environmental impact, ~~and~~ safety and health programs, and
23 unauthorized aliens respectively."

24 **SECTION 6.** G.S. 105-129.62 is amended by adding a new subsection to
25 read:

26 "(e1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
27 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
28 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
29 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
30 taxpayer employs an unauthorized alien at the establishment with respect to which the
31 credit is claimed, the credit expires and the taxpayer may not take any remaining
32 carryforward of the credit."

33 **SECTION 7.** G.S. 105-129.83 is amended by adding a new subsection to
34 read:

35 "(g1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
36 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
37 credit and each year it claims an installment or carryforward of a credit, that the
38 taxpayer employs no unauthorized aliens at the establishment with respect to which the
39 credit is claimed. If a taxpayer employs an unauthorized alien at the establishment with
40 respect to which the credit is claimed, the credit expires and the taxpayer may not take
41 any remaining installment or carryforward of the credit."

42 **SECTION 8.** G.S. 105-130.45 is amended by adding a new subsection to
43 read:

1 "(e) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
2 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
3 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
4 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
5 taxpayer employs an unauthorized alien at the establishment with respect to which the
6 credit is claimed, the credit expires and the taxpayer may not take any remaining
7 carryforward of the credit."

8 **SECTION 9.** G.S. 105-130.46 is amended by adding a new subsection to
9 read:

10 "(i1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
11 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
12 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
13 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
14 taxpayer employs an unauthorized alien at the establishment with respect to which the
15 credit is claimed, the credit expires and the taxpayer may not take any remaining
16 carryforward of the credit."

17 **SECTION 10.** G.S. 105-130.47 is amended by adding a new subsection to
18 read:

19 "(f1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
20 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
21 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
22 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
23 taxpayer employs an unauthorized alien at the establishment with respect to which the
24 credit is claimed, the credit expires and the taxpayer may not take any remaining
25 carryforward of the credit."

26 **SECTION 11.** G.S. 105-151.29 is amended by adding a new subsection to
27 read:

28 "(f1) Unauthorized Aliens. – A taxpayer is eligible for a credit allowed under this
29 Article only if the taxpayer certifies that, as of the time the taxpayer first claims the
30 credit and each year it claims a carryforward of a credit, that the taxpayer employs no
31 unauthorized aliens at the establishment with respect to which the credit is claimed. If a
32 taxpayer employs an unauthorized alien at the establishment with respect to which the
33 credit is claimed, the credit expires and the taxpayer may not take any remaining
34 carryforward of the credit."

35 **SECTION 12.** G.S. 143B-431.2 reads as rewritten:

36 **"§ 143B-431.2. Department of Commerce – limitation on grants and loans.**

37 (a) Default. – The Department of Commerce may not make a loan nor award a
38 grant to any individual, organization, or governmental unit if that individual,
39 organization, or governmental unit is currently in default on any loan made by the
40 Department of Commerce.

41 (b) Unauthorized Aliens. – The Department of Commerce may not make a loan
42 nor award a grant to any person if that person employs any unauthorized aliens as that
43 term is defined in G.S. 105-228.90."

1 **SECTION 13.** G.S. 143B-437.02 is amended by adding a new subsection to
2 read:

3 "(g1) Unauthorized Alien. – A business is eligible for consideration for site
4 development under this Part only if the business certifies that, at the time of the
5 application, the business does not employ any unauthorized aliens in this State."

6 **SECTION 14.** G.S. 143B-437.51 is amended by adding a new subdivision to
7 read:

8 **"§ 143B-437.51. Definitions.**

9 The following definitions apply in this Part:

10 ...

11 (9a) Unauthorized alien. – Defined in G.S. 105-228.90."

12 **SECTION 15.** G.S. 143B-437.53 is amended by adding a new subsection to
13 read:

14 "(f) Unauthorized Alien. – A business is eligible for a grant under this Part only if
15 the business certifies that the business does not employ any unauthorized aliens in this
16 State. Each year that a business receives a grant under this Part, the business must
17 provide with the submission required under G.S. 143B-437.58 a certification that the
18 business still does not employ any unauthorized aliens. If the business employs
19 unauthorized aliens, the Committee shall amend or terminate the agreement as provided
20 in G.S. 143B-437.59."

21 **SECTION 16.** G.S. 143B-437.73 reads as rewritten:

22 **"§ 143B-437.73. Program guidelines.**

23 (a) Guidelines. – The Department of Commerce, in conjunction with the
24 Governor's Office, shall develop guidelines related to the administration of the One
25 North Carolina Fund and to the selection of projects to receive allocations from the
26 Fund. At least 20 days before the effective date of any guidelines or nontechnical
27 amendments to guidelines, the Department of Commerce must publish the proposed
28 guidelines on the Department's Web site and provide notice to persons who have
29 requested notice of proposed guidelines. In addition, the Department must accept oral
30 and written comments on the proposed guidelines during the 15 business days beginning
31 on the first day that the Department has completed these notifications. For the purpose
32 of this section, a technical amendment is either of the following:

- 33 (1) An amendment that corrects a spelling or grammatical error.
- 34 (2) An amendment that makes a clarification based on public comment
35 and could have been anticipated by the public notice that immediately
36 preceded the public comment.

37 (b) Unauthorized Aliens. – No moneys in the Fund may be used for an agreement
38 with a business that employs unauthorized aliens."

39
40 **PART II. REQUIRING EVERY AGENCY AND POLITICAL SUBDIVISION OF**
41 **THE STATE TO VERIFY THE LAWFUL PRESENCE OF ALL APPLICANTS**
42 **FOR PUBLIC ASSISTANCE THAT ARE 18 YEARS OF AGE OR OLDER;**
43 **SETTING FORTH THE PROCEDURE FOR VERIFICATION; AND MAKING**
44 **IT A CRIMINAL VIOLATION TO MAKE A FALSE, FICTITIOUS, OR**

1 **FRAUDULENT STATEMENT IN AN AFFIDAVIT EXECUTED PURSUANT**
2 **TO THIS ACT.**

3
4 **SECTION 17.** The General Statutes are amended by adding a new Chapter
5 to read:

6 **"Chapter 135A.**

7 **"Public Benefits.**

8 **"§ 135A-1. Definitions.**

9 The following definitions apply in this Chapter:

- 10 (1) Emergency medical condition. – As defined in 42 U.S.C. §
11 1396b(v)(3).
12 (2) Federal public benefit. – As defined in 8 U.S.C. § 1611.
13 (3) SAVE. – Systematic Alien Verification of Entitlement program of the
14 United States Department of Homeland Security.
15 (4) State or local public benefit. – As defined in 8 U.S.C. § 1621.

16 **"§ 135A-2. No discrimination.**

17 This Chapter shall be enforced without regard to race, religion, gender, ethnicity, or
18 national origin.

19 **"§ 135A-3. Verification of lawful presence required to receive public benefits;**
20 **exceptions.**

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

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

- 27 (1) Any purposes for which lawful presence in the United States is not
28 required by law, ordinance, or regulation.
29 (2) Assistance for health care items and services that are necessary for the
30 treatment of an emergency medical condition of the alien involved and
31 are not related to an organ transplant procedure.
32 (3) Short-term, noncash, in-kind emergency disaster relief.
33 (4) Public health assistance for immunizations with respect to
34 immunizable diseases and for testing and treatment of symptoms of
35 communicable diseases whether or not the symptoms are caused by a
36 communicable disease.
37 (5) Programs, services, or assistance such as soup kitchens, crisis
38 counseling and intervention, and short-term shelter specified by the
39 United States Attorney General, in the United States Attorney
40 General's sole and unreviewable discretion after consultation with
41 appropriate federal agencies and departments, which:
42 a. Deliver in-kind services at the community level, including
43 through public or private nonprofit agencies;

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

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

5 (6) Prenatal care; or

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

11 **"§ 135A-4. Method of verifying lawful presence in the United States; penalty for**
12 **knowing misrepresentation; waiver.**

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

32 (c) Any person who knowingly and willfully makes a false, fictitious, or
33 fraudulent statement of representation in an affidavit executed under subsection (a) of
34 this section shall, upon conviction thereof, be guilty of a Class I felony, except that no
35 person shall be guilty of any crime for executing an affidavit attesting to lawful
36 presence in the United States that contains a false statement if the affidavit is not
37 required by this section.

38 (d) Agencies or political subdivisions of this State may adopt rules providing for
39 waiver from this section to improve efficiency or reduce delay in the verification
40 process or to provide for adjudication of unique individual circumstances where the
41 verification procedures under this section would impose unusual hardship on a legal
42 resident of this State.

43 **"§ 135A-5. Compliance mandatory; reporting requirement.**

1 It shall be unlawful for any agency or political subdivision of this State to provide
2 any State, local, or federal benefit in violation of this section. Each State or local agency
3 or political subdivision that administers any program of State or local public benefits
4 shall provide an annual report to the General Assembly and the Governor with respect
5 to the agency's or political subdivision's compliance with this section. The report shall
6 be submitted not later than March 1 of each year."

7
8 **PART III. PROHIBITING STATE AND LOCAL GOVERNMENT**
9 **CONTRACTS WITH CONTRACTORS WHO EMPLOY ILLEGAL**
10 **IMMIGRANTS AND REQUIRING CONTRACTORS TO VERIFY AND**
11 **CERTIFY THEIR EMPLOYEES' LEGAL STATUS OR AUTHORIZATION TO**
12 **WORK IN THE UNITED STATES.**

13
14 **SECTION 18.** Article 8 of Chapter 143 of the General Statutes is amended
15 by adding the following new section to read:

16 **"§ 143-129.1A. Contracts with illegal immigrants prohibited; verification and**
17 **certification required.**

18 (a) No contract for construction or repair work or for the purchase of apparatus,
19 supplies, materials, or equipment shall be awarded by any agent or employee of the
20 State, any board or governing body of the State or of any institution of the State
21 government, or any agent, employee, or board or governing body of any political
22 subdivision of the State to any contractor who knowingly employs or contracts with an
23 illegal immigrant to perform work under the contract or who knowingly contracts with a
24 subcontractor who knowingly employs or contracts with an illegal immigrant to perform
25 work under the contract. For purposes of this section, the term 'contractor' means any
26 person, firm, association, or corporation who desires to submit a bid for or enter into a
27 contract with any State department, institution, or agency, or the board or governing
28 body of any political subdivision of the State to perform construction or repair work or
29 to supply apparatus, supplies, materials, or equipment.

30 (b) Prior to submitting a bid or entering into a contract, a contractor shall verify,
31 in accordance with the Basic Pilot Employment Verification Program administered by
32 the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et
33 seq., the legal status or authorization to work in the United States of each individual
34 employed by the contractor to perform work under the contract. The verification
35 required by this section shall be conducted only after the hiring of the individual as an
36 employee to work in the United States in accordance with State and federal law.

37 (c) A contractor submitting a bid or entering into a contract shall certify that the
38 contractor has verified, as provided in subsection (b) of this section, the legal status or
39 authorization to work in the United States of each individual employed by the contractor
40 to perform work under the contract. Any person who submits a certification required by
41 this subsection known to be false shall be guilty of a Class I felony.

42 (d) Every contract entered into under this Article shall contain a provision that:

43 (1) The contractor shall not:

- a. Knowingly employ or contract with an illegal immigrant to perform work under the contract.
- b. Enter into a contract with a subcontractor who fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal immigrant to perform work under the contract.

(2) The contractor has verified through participation in the Basic Pilot Employment Verification Program administered by the United States Department of Homeland Security the legal status or authorization to work in the United States of each individual employed by the vendor to perform work under the contract.

(e) A violation of this section shall render the contract void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare and (ii) the continuation is approved by the Secretary of Administration after consultation with the affected State department, institution, or agency, or the governing body of the political subdivision of the State. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare.

(f) If a contractor is discovered to have knowingly used the services of illegal immigrants in the performance of a contract, the contractor shall be prohibited from submitting a bid for or entering into a contract to supply goods or services to the State or any political subdivision of the State for one year from the date the violation was discovered."

SECTION 19. Sections 1 through 11 of this act are effective for taxable years beginning on or after January 1, 2007. Sections 12 through 16 of this act are effective when they become law and apply to agreements entered into on or after that date. Section 17 of this act becomes effective January 1, 2008, and applies to applications made and acts committed on and after that date. Section 18 of this act becomes effective October 1, 2007, and applies to all bids submitted and all contracts entered into on or after that date.