

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 337

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

Sponsors: Senators Allran; Apodaca, Brunstetter, Forrester, and Jacumin.

Referred to: State and Local Government.

February 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA ILLEGAL IMMIGRATION REFORM
3 ACT.

4 The General Assembly of North Carolina enacts:

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6 **PART I. SHORT TITLE**

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8 **SECTION 1.** This act shall be known and may be cited as "The North Carolina
9 Illegal Immigration Reform Act." All requirements of this act concerning immigration or the
10 classification of immigration status shall be construed in conformity with federal law.
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12 **PART II. REQUIRE COUNTIES AND CITIES TO USE THE FEDERAL WORK**
13 **AUTHORIZATION PROGRAM TO VERIFY THE WORK AUTHORIZATION OF**
14 **NEW EMPLOYEES**

15
16 **SECTION 2.(a)** Article 5 of Chapter 153A of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 153A-94.3. County verification of employee work authorization.**

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

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

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

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

32 **"§ 160A-164.3. City verification of employee work authorization.**

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

36 (b) As used in this section, the term 'federal work authorization program' means any of
37 the electronic verification of work authorization programs operated by the United States



1 Department of Homeland Security or any equivalent federal work authorization program
2 operated by the United States Department of Homeland Security to verify information of newly
3 hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), Public
4 Law 99-603.

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

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8 **PART III. REQUIRE PUBLIC CONTRACTORS TO USE THE FEDERAL WORK**
9 **AUTHORIZATION PROGRAM**

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

13 "Article 1.

14 "Various Provisions Relating to Aliens."

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

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

19 "Article 2.

20 "Unauthorized Aliens and Public Contracts.

21 **"§ 64-10. Definitions.**

22 The following definitions apply in this Article:

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

37 **"§ 64-11. Contractors with public agencies must use federal work authorization program.**

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

- 40 (1) Register and participate in the federal work authorization program to verify
41 the employment authorization of all new employees; and require agreement
42 from its subcontractors, and through the subcontractors, the
43 sub-subcontractors, to register and participate in the federal work
44 authorization program to verify the work authorization of all new
45 employees.
- 46 (2) Employ only workers who satisfy at least one of the following:
- 47 a. Possess a valid North Carolina drivers license or identification card
48 issued by the North Carolina Division of Motor Vehicles.
- 49 b. Are eligible to obtain a North Carolina drivers license or
50 identification card in that they meet the requirements set forth in
51 Article 2 or Article 2C of Chapter 20 of the General Statutes.

1 c. Possess a valid drivers license or identification card from another
2 state where the license requirements are at least as strict as those in
3 North Carolina, as determined by the Commissioner of Motor
4 Vehicles or the Commissioner's designee. The Commissioner of
5 Motor Vehicles, or his designee, shall publish on its Web site a list of
6 states where the license requirements are at least as strict as those in
7 this State.

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

10 **"§ 64-12. Applicability of Article.**

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

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

25 **"§ 64-13. Compliance with Article.**

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

- 29 (1) The applicability of this Article to the contractor, subcontractor, and
30 sub-subcontractor.
- 31 (2) The compliance with this Chapter by the contractor and any subcontractor or
32 sub-subcontractor.

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

35 **"§ 64-14. No sanction for contractors that comply with this Article in good faith.**

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

39 **"§ 64-15. Knowingly making a false statement a felony.**

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

42 **"§ 64-16. Local ordinances or policies hindering this Article not permitted.**

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

46 **"§ 64-17. Forms and rule making.**

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

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

50 "*i* No contract subject to this section may be awarded by any board or governing body
51 of the State, institution of the State government, or any political subdivision of the State, unless

1 the contractor complies with the requirements of Article 2 of Chapter 64 of the General
2 Statutes, where applicable."

3
4 **PART IV. REQUIRE PRIVATE EMPLOYERS TO USE THE FEDERAL WORK**
5 **AUTHORIZATION PROGRAM; PROHIBIT THE HIRING OF UNAUTHORIZED**
6 **ALIENS**

7
8 **SECTION 4.(a)** Chapter 64 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 3.

11 "Employment of Unauthorized Aliens.

12 **§ 64-20. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Agency. – Any agency, department, board, or commission of this State, a
15 county, or city that issues a license for purposes of operating a business in
16 this State.
- 17 (2) Employ. – Hiring an employee after January 1, 2010.
- 18 (3) Employee. – Any person who provides services or labor for an employer in
19 this State for wages or other remuneration. This term does not include an
20 independent contractor.
- 21 (4) Employer. – Any individual or type of organization that transacts business in
22 this State, that has a license issued by an agency in this State, and that
23 employs one or more employees in this State. In the case of an independent
24 contractor, the term means the independent contractor and does not mean the
25 person or organization that uses the contract labor. The term does not
26 include governmental organizations.
- 27 (5) 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 (6) Independent contractor. – Any individual or entity that carries on an
34 independent business, that contracts to do a piece of work according to the
35 individual's or entity's own means and methods, and that is subject to control
36 only as to results. Whether an individual or entity is an independent
37 contractor is to be determined on a case-by-case basis through various
38 factors including whether the individual or entity:
- 39 a. Supplies the tools or materials.
- 40 b. Makes services available to the general public.
- 41 c. Works or may work for a number of clients at the same time.
- 42 d. Has an opportunity for profit or loss as a result of labor or service
43 provided.
- 44 e. Invests in the facilities for work.
- 45 f. Directs the order or sequence in which the work is completed.
- 46 g. Determines the hours when the work is completed.
- 47 (7) Intentionally. – With respect to a result or to particular conduct, acting with
48 the objective of causing that result or engaging in that conduct.
- 49 (8) Knowingly employ an unauthorized alien. – The actions described in 8
50 U.S.C. § 1324a(a)(1)(A). This term shall be interpreted consistently with any
51 applicable federal rules and regulations.

- 1 (9) License. – Any agency permit, certificate, approval, registration, charter, or
2 similar form of authorization that is required by law in order to operate a
3 business in this State. This term does not include any professional license.
4 (10) Social security number verification service. – The program administered by
5 the Social Security Administration to verify the social security numbers of
6 existing workers, or any of its successor programs.
7 (11) Unauthorized alien. – An alien who does not have the legal right or
8 authorization under federal law to work in the United States as described in
9 8 U.S.C. § 1324a(h)(3).

10 **"§ 64-21. Effect of violations of federal immigration law.**

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

19 **"§ 64-22. Knowingly employing unauthorized alien prohibited; penalties.**

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

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

46 (c) If, after an investigation, the Attorney General or county attorney determines that
47 the complaint is not false or frivolous:

- 48 (1) The Attorney General or county attorney shall notify the United States
49 Customs and Immigration Enforcement of the presence of the unauthorized
50 alien.

1 (2) The Attorney General or county attorney shall notify local law enforcement
2 agencies of the presence of the unauthorized alien.

3 (3) The Attorney General shall notify the appropriate county attorney to bring
4 an action pursuant to subsection (d) of this section if the complaint was
5 originally filed with the Attorney General.

6 (d) An action for a violation of subsection (a) of this section shall be brought against the
7 employer by the county attorney in the county where the unauthorized alien employee is or was
8 employed by the employer. The county attorney shall not bring an action against any employer
9 for any violation of subsection (a) of this section that occurs before January 1, 2010. A second
10 violation of this section shall be based only on an unauthorized alien who is employed by the
11 employer after an action has been brought for a violation of subsection (a) of this section.

12 (e) For a finding of a violation of subsection (a) of this section:

13 (1) For a first violation as described in subdivision (3) of this subsection, the
14 court:

15 a. Shall order the employer to terminate the employment of all
16 unauthorized aliens.

17 b. Shall order the employer to be subject to a three-year probationary
18 period for the business location where the unauthorized alien
19 performed work. During the probationary period, the employer shall
20 file quarterly reports with the county attorney of each new employee
21 who is hired by the employer at the business location where the
22 unauthorized alien performed work.

23 c. Shall order the employer to file a signed, sworn affidavit with the
24 county attorney within three business days after the order is issued.
25 The affidavit shall state that the employer has terminated the
26 employment of all unauthorized aliens in this State and that the
27 employer will not intentionally or knowingly employ an
28 unauthorized alien in this State. The court shall order the appropriate
29 agencies to suspend all licenses subject to this subdivision that are
30 held by the employer if the employer fails to file a signed, sworn
31 affidavit with the county attorney within three business days after the
32 order is issued. All licenses that are suspended under this subdivision
33 shall remain suspended until the employer files a signed, sworn
34 affidavit with the county attorney. Notwithstanding any other
35 provision of law, on filing of the affidavit, the suspended licenses
36 shall be reinstated immediately by the appropriate agencies for the
37 purposes of this subdivision. The licenses that are subject to
38 suspension under this subdivision are all licenses that are held by the
39 employer specific to the business location where the unauthorized
40 alien performed work. If the employer does not hold a license
41 specific to the business location where the unauthorized alien
42 performed work, but a license is necessary to operate the employer's
43 business in general, the licenses that are subject to suspension under
44 this subdivision are all licenses that are held by the employer at the
45 employer's primary place of business. On receipt of the court's order
46 and notwithstanding any other provision of law, the appropriate
47 agencies shall suspend the licenses according to the court's order.
48 The court shall send a copy of the court's order to the Attorney
49 General, and the Attorney General shall maintain the copy pursuant
50 to subsection (f) of this section.

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

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

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

27 (3) The violation shall be considered:

- 28 a. A first violation by an employer at a business location if the violation
29 did not occur during a probationary period ordered by the court under
30 this subsection.
- 31 b. A second violation by an employer at a business location if the
32 violation occurred during a probationary period ordered by the court
33 under this subsection.

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

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

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

45 (i) For the purposes of this section, an employer who establishes that it has complied in
46 good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an affirmative defense that
47 the employer did not knowingly employ an unauthorized alien. For purposes of this subsection,
48 an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b)
49 notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the
50 requirements, so long as there is a good faith attempt to comply with the requirements.

51 "§ 64-23. Article does not require action that is contrary to federal or State law."

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

3 **"§ 64-24. Employers must use federal work authorization program.**

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

8 **"§ 64-25. Discharge of authorized employee while employer simultaneously employs an**
9 **unauthorized alien is an unfair trade practice.**

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

14
15 **PART V. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS IN**
16 **NORTH CAROLINA**

17
18 **SECTION 5.(a)** Article 20 of Chapter 15A of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 15A-407. Memorandum of understanding for enforcement of federal immigration**
21 **laws.**

22 (a) The Attorney General shall negotiate the terms of a memorandum of understanding
23 between the State of North Carolina and the United States Department of Justice or Department
24 of Homeland Security, as authorized by 8 U.S.C. § 1357(g), concerning the enforcement of
25 federal immigration and customs laws, detention and removals, and investigations in the State
26 of North Carolina.

27 (b) The memorandum of understanding negotiated pursuant to subsection (a) of this
28 section shall be signed on behalf of the State by the Attorney General and the Governor or as
29 otherwise required by the appropriate federal agency.

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

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

38 **SECTION 5.(b)** Article 20 of Chapter 15A of the General Statutes is amended by
39 adding a new section to read:

40 **"§ 15A-408. No prohibitions on cooperating with federal officials regarding immigration**
41 **status.**

42 (a) A municipality, county, or other political subdivision of this State shall not adopt
43 any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local
44 government employee from seeking to enforce a State law with regard to immigration.

45 (b) A municipality, county, or other political subdivision of this State shall not enact
46 any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local
47 government employee from communicating to appropriate federal or State officials with regard
48 to the immigration status of any person within this State.

49 (c) A municipality, county, or other political subdivision shall not enact any ordinance,
50 policy, regulation, or other legislation pertaining to the employment, licensing, permitting, or
51 otherwise doing business with a person based upon that person's authorization to work in the

1 United States that exceeds or otherwise conflicts with federal law or that is in conflict with
2 State law. An enactment found to be in conflict with federal or State law is void."

3
4 **PART VI. ESTABLISH IMMIGRATION ASSISTANCE REGISTRATION ACT**

5
6 **SECTION 6.** Chapter 64 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 4.

9 "Immigration Assistance Registration Act.

10 **"§ 64-30. Short title.**

11 This Article shall be known and may be cited as the 'Immigration Assistance Registration
12 Act.'

13 **"§ 64-31. Definitions.**

14 The following definitions shall apply in this Article:

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

35 **"§ 64-32. Registration required.**

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

42 (b) The Secretary of State may collect a fee from any person providing immigration
43 assistance services not exempt under this Article in an amount not to exceed twenty dollars
44 (\$20.00) to cover the administrative costs associated with establishing and maintaining the
45 registry.

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

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

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

3 **"§ 64-33. Exemptions.**

4 The following persons are exempt from this Article:

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

20 **"§ 64-34. Immigration assistance services permitted.**

21 A person providing or offering to provide immigration assistance services shall perform
22 only the following immigration assistance services:

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

46 **"§ 64-35. Posting signs; advertisements.**

47 (a) Any person providing or offering to provide immigration assistance services who is
48 not exempt under this Article shall post signs prominently at his or her place of business which
49 set forth information in English and in every other language in which the person provides or
50 offers to provide immigration assistance services. The signs shall contain the following
51 statement in boldface type and capital letters: 'I AM NOT AN ATTORNEY LICENSED TO

1 PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR
2 LEGAL ADVICE.' Each language in which the person provides or offers to provide
3 immigration assistance services shall be on a separate sign, and each sign shall be at least 12
4 inches by 17 inches.

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

15 **"§ 64-36. Prohibited conduct.**

16 A person providing immigration assistance services who is not exempt under this Article
17 shall not:

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

42 **"§ 64-37. Violations.**

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

46 (b) Any person who willfully does any of the following with respect to making a false,
47 fictitious, or fraudulent statement or representation in any document prepared or executed as
48 part of the provision of immigration assistance services in an immigration matter shall be guilty
49 of a Class H felony:

- 50 (1) Makes such a statement.
- 51 (2) Aids or abets a person in making such a statement.

1 (3) Solicits or conspires to make such a statement.

2 (c) It is a separate violation of this section each time a person willfully makes, aids, or
3 abets in the making of, or solicits or conspires to make a false, fictitious, or fraudulent
4 statement or representation in any document prepared or executed as part of the provision of
5 immigration assistance services in an immigration matter.

6 (d) A person convicted under this section shall make restitution to any agency or
7 political subdivision that administered a benefit or entitlement program that provided a person
8 with a benefit as a result of a violation under this section."

9
10 **PART VII. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**
11 **UNAUTHORIZED ALIENS**

12
13 **SECTION 7.(a)** G.S. 105-130.2 is amended by adding a new subdivision to read:

14 **"§ 105-130.2. Definitions.**

15 The following definitions apply in this Part:

16 ...

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

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

20 **"§ 105-130.5. Adjustments to federal taxable income in determining State net income.**

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

23 ...

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

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

29 **"§ 105-134.1. Definitions.**

30 The following definitions apply in this Part:

31 ...

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

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

35 **"§ 105-134.6. Adjustments to taxable income.**

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

38 ...

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

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

44
45 **PART VIII. WITHHOLDING ON COMPENSATION PAID TO UNAUTHORIZED**
46 **ALIENS**

47
48 **SECTION 8.(a)** G.S. 105-163.1 reads as rewritten:

49 **"§ 105-163.1. Definitions.**

50 The following definitions apply in this Article:

- 1 (1) Compensation. – Consideration a payer pays a nonresident ~~individual or~~
 2 ~~nonresident entity~~individual, nonresident entity, or an unauthorized alien for
 3 personal services performed in this State.
- 4 (2) Contractor. – ~~Either~~Any of the following:
- 5 a. A nonresident individual who performs in this State for
 6 compensation other than wages any personal services in connection
 7 with a performance, an entertainment, an athletic event, a speech, or
 8 the creation of a film, radio, or television program.
- 9 b. A nonresident entity that provides for the performance in this State
 10 for compensation of any personal services in connection with a
 11 performance, an entertainment, an athletic event, a speech, or the
 12 creation of a film, radio, or television program.
- 13 c. An unauthorized alien who performs any personal services in this
 14 State for compensation other than wages.
- 15 ...
- 16 (12a) Unauthorized alien. – Defined in 8 U.S.C. § 1324a(h)(3).
- 17"

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

20

21 **PART IX. VERIFICATION OF LAWFUL PRESENCE THROUGH THE SAVE**
 22 **PROGRAM WHERE LAWFUL PRESENCE IS REQUIRED TO RECEIVE PUBLIC**
 23 **BENEFITS**

24

25 **SECTION 9.(a)** Chapter 64 of the General Statutes is amended by adding a new
 26 Article to read:

27 "Article 5.

28 "Verification of Eligibility for Public Benefits.

29 **"§ 64-40. Definitions.**

30 The following definitions apply in this Article:

- 31 (1) Federal public benefit. – As defined in 8 U.S.C. § 1611.
- 32 (2) SAVE. – The Systematic Alien Verification of Entitlement program of the
 33 United States Department of Homeland Security.
- 34 (3) State or local public benefit. – As defined in 8 U.S.C. § 1621.

35 **"§ 64-41. This Article governs verification of eligibility to receive public benefits.**

36 (a) Whenever a person who is 18 years of age or older applies for a State or local public
 37 benefit or a federal public benefit administered by the State, and the person's eligibility for the
 38 benefit is contingent on the person's immigration status, the State agency or political
 39 subdivision of this State to which the person applies shall verify the person's immigration status
 40 in accordance with this Article.

41 (b) It shall be unlawful for any agency or political subdivision of this State to provide
 42 any State or local public benefit or federal public benefit in violation of this section.

43 (c) The Requirements of this Article shall be enforced without regard to race, religion,
 44 gender, ethnicity, or national origin.

45 **"§ 64-42. Verification procedure.**

46 (a) Affidavit requirement. – An applicant for a public benefit shall be required to
 47 execute an affidavit stating that the applicant is 18 years of age or older and is one of the
 48 following:

- 49 (1) A United States citizen.
- 50 (2) Lawfully present in the United States.

1 **(b) Verification by Agency.** – For any applicant who has executed an affidavit that the
2 applicant is lawfully present in the United States, the State agency or political subdivision shall
3 verify immigration status through SAVE or a successor program designated by the United
4 States Department of Homeland Security.

5 **(c) Affidavit as Presumptive Proof of Lawful Presence.** – Until verification is made
6 pursuant to subsection (c) of this section, the affidavit may be presumed to be proof of lawful
7 presence for the purposes of this Article.

8 **(d) Any person who willfully makes a false, fictitious, or fraudulent statement or**
9 representation in an affidavit executed pursuant to subsection (a) of this section shall be guilty
10 of a Class H felony. However, a person shall not be guilty of any crime for executing an
11 affidavit under this section if the affidavit is not required by this Article.

12 **"§ 64-43. Waiver by rule or ordinance of verification requirements; reporting of SAVE**
13 **errors and delays.**

14 **(a) State agencies or political subdivisions of this State may adopt rules or ordinances**
15 providing for waiver from the requirements of G.S. 64-42 to improve efficiency or reduce delay
16 in the verification process or to provide for adjudication of unique individual circumstances
17 where the verification procedures required by this Article would impose unusual hardship on a
18 legal resident of this State.

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

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

25
26 **PART X. CREATE THE CRIME OF UNLAWFUL TRANSFER OR CONCEALMENT**
27 **OF AN ALIEN**

28
29 **SECTION 10.** Article 1 of Chapter 64 of the General Statutes, as created by this
30 act, is amended by adding a new section to read:

31 **"§ 64-6. Unlawful transfer or concealment of an alien.**

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

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

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

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

- 1 (1) Programs, services, or assistance (such as soup kitchens, crisis counseling
2 and intervention, and short-term shelter) specified by the United States
3 Attorney General, in the United States Attorney General's sole discretion
4 after consultations with appropriate federal agencies and departments, that
5 do all of the following:
- 6 a. Deliver in-kind services at the community level, including through
7 public or private nonprofit agencies.
- 8 b. Do not condition the provision of assistance, the amount of
9 assistance provided, or the cost of assistance provided on the
10 individual recipient's income or resources.
- 11 c. Are necessary for the protection of life or safety.
- 12 (2) Shelter provided for strictly humanitarian purposes or provided under the
13 federal Violence Against Women Act, so long as the shelter is not provided
14 in furtherance of or in an attempt to conceal a person's illegal presence in the
15 United States.
- 16 (3) Churches or other religious institutions that are recognized as 501(c)(3)
17 organizations by the Internal Revenue Service.
- 18 (e) Providing health care treatment or services to a natural person who is in the United
19 States unlawfully is not a violation of this section."
20

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

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

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

- 33 (1) Making financial or credit transactions in the other person's name.
34 (2) Obtaining anything of value, benefit, or advantage.
35 (3) Avoiding legal consequences.
36 (4) Obtaining employment."
37

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

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

41 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 **"§ 15-1. Statement of purpose.**

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

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

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

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

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

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

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

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

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

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

43 44 **PART XIV. SEVERABILITY CLAUSE**

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

50 51 **PART 15. EFFECTIVE DATES**

1
2
3

SECTION XV. Except as otherwise provided, this act is effective when it becomes law.