

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Fiscal Note

BILL NUMBER: House Bill 786 (Second Edition)

SHORT TITLE: RECLAIM NC Act.

SPONSOR(S): Representatives Warren, Jordan, B. Brown, and Collins

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

Table with 5 columns: State Impact, FY 2013-14, FY 2014-15, FY 2015-16, FY 2016-17, FY 2017-18. Rows include Highway Fund Revenues, Highway Fund Expenditures, State Positions, and NET STATE IMPACT.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Department of Transportation, Division of Motor Vehicles; Department of Labor

EFFECTIVE DATE: Section 2, 3, 4, 5, and 10 are effective December 1, 2013. Sections 7 and 9 are effective October 1, 2013. Remainder is effective when it becomes law.

TECHNICAL CONSIDERATIONS:

None

BILL SUMMARY:

H786. RECLAIM NC ACT. (April 17, 2013)

AN ACT TO ENACT THE REASONABLE ENACTMENT OF COMPREHENSIVE LEGISLATION ADDRESSING IMMIGRATION MATTERS IN NORTH CAROLINA (RECLAIM NC) ACT.

False Identification Documents. Amends G.S. 14-100.0 to make it unlawful to knowingly possess, manufacture, or sell a false or fraudulent form of identification for deception, fraud, or other criminal conduct. Makes it a I felony to violate the statute, except makes the following a Class 1 misdemeanor: (1) violation based on the mere possession of a false or fraudulent form of ID; (2) violation by a person under age 21 for the purpose of purchasing alcohol; and (3) violation by a person under age 18 for the purpose of purchasing tobacco products or cigarette wrapping papers. Amends G.S. 20-30 to extend the provisions of the statute to include fraudulent restricted drivers permits, in addition to licenses, learners permits, and special identification cards. Makes violations

of the statute a Class I felony, except (1) it is a Class H felony to sell or offer for sale any reproduction or facsimile or simulation of a drivers' license, learner's permit, restricted drivers permit, or special identification card, (2) a violation by a person under the age of 21 for the purposes of purchasing alcohol is a Class 1 misdemeanor, and (3) a violation by a person under 18 for the purpose of purchasing tobacco products or cigarette wrappers is a Class 2 misdemeanor. Makes organizational changes to the statute. Makes a conforming change to G.S. 143-341. Effective December 1, 2013, and applies to offenses committed on or after that date.

Rebuttable Presumption Against the Pretrial Release of Certain Undocumented Aliens. Amends G.S. 15A-533 to create a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the US and a judicial officer finds that there is reasonable cause to believe the person committed (1) one or more of the following: a sex offense, a violent felony, a driving offense, a drug offense, or a gang offense; or (2) an offense not listed in (1) and the US Immigration and Customs Enforcement has guaranteed that, in all such cases, it will issue a detainer for the initiation of removal proceedings and agree to reimburse the state for the cost of incarceration from the time of the issuance of the detainer. Makes conforming changes. Effective December 1, 2013, and applies to offenses committed on or after that date.

Reimbursement of Cost of Incarcerating Undocumented Aliens. Enacts new G.S. 148-2.1 requiring an undocumented alien prisoner, as defined, to reimburse the state for the actual cost of incarceration, to be remitted to the General Fund. Provides that any reimbursement that is unpaid is a "debt" and may be set off against any state income tax refund, and allows collection of the debt through the setoff for at least 10 years from the time of release or termination, or until the debt is satisfied. Allows the judge to include in the order a requirement that the individual pay an amount estimated to be sufficient to cover the total actual cost of incarceration over the entirety of the prisoner's incarceration. Amends G.S. 148-33.1 to make a conforming change. Effective December 1, 2013, and applies to offenses committed on or after that date.

Immigration Status Checks for Certain Persons Lawfully Stopped, Detained, or Arrested. Enacts new G.S. 15A-506 to allow a law enforcement officer or agency to make a reasonable attempt to verify the immigration status of a person lawfully stopped, detained, or arrested, where reasonable suspicion exists that the person is an alien unlawfully present in the US. Requires that the verification be made as soon as possible and within 24 hours of the stop, detention, or arrest. Sets out conditions under which the statute does not apply, including when verifying the person's immigration status may hinder or obstruct the investigation, and when the person can provide one the listed types of valid identification. Effective December 1, 2013, and applies to offenses committed on or after that date.

Miscellaneous. Enacts new G.S. 64-9 to specify permissible methods for verifying immigration status. Enacts new G.S. 64-10 allowing records relating to immigration status to be admissible in court without further foundation or testimony from a records custodian if the record is certified as authentic by the federal agency responsible for keeping records. Enacts new G.S. 64-11 to provide for the transportation of an unlawfully present alien by state or local law enforcement. Enacts new G.S. 64-12 to provide for the construction of the Chapter and to establish a severability clause.

Prohibit Use of Certain Documents for Identification Purposes. Enacts new G.S. 15A-306 to prohibit the use of the following documents in determining a person's actual identity or residency (1) matricular consular or similar document is used by another country, and (2) an identity

document issued or created by any person, organization, country, city, or other local authority, except where expressly authorized by the General Assembly to be used. Amends G.S. 20-7 and G.S. 58-2-164, removing matricular consular and similar documents from those that are reasonably reliable indicators of residency. Amends G.S. 108A-55.3 (Verification of State residency required for medical assistance) to remove a document issued by a foreign consulate verifying the applicant's intent to live in the state or that the applicant is residing in the state to seek employment or with a job commitment, from the list of documents that may be used to prove state residency. Effective October 1, 2013.

E-Verify. The following changes are effective as follows: (1) October 1, 2013 for contractors that employ 500 or more employees as of that date, and their subcontractors, (2) January 1, 2014, for contractors that employ 100 or more employees but fewer than 500 as of that date, and their subcontractors, and (3) July 1, 2014, for all other contractors and subcontractors. Amends G.S. 153A-449 (counties) and G.S. 160A-20.1 (cities) to prohibit a county or city from entering into a contract unless the contractor and the subcontractors register and participate in E-Verify. Amends G.S. 143-129 (Procedure for letting of public contracts) to prohibit awarding contracts subject to the statute unless the contractor and subcontractors register and participate in E-Verify. Enacts new G.S. 143-48.5 requiring the use of E-Verify by contractors and subcontractors in contracts subject to Article 3 (Purchases and Contracts) of G.S. Chapter 143. Amends GS 147-33.95 to make contracts subject to Part 4 (Procurement of Information Technology) of Article 3D of G.S. Chapter 147 subject to the E-Verify requirement.

The following changes are effective when they become law. Amends G.S. 64-25 to exclude from the definition of employee, an individual whose term of employment is customarily affected by the seasonality of the industry in which the individual is employed, or less than year round. Repeals G.S. 64-26(c), which exempted a seasonal temporary employee employed for 90 or fewer days during a 12-consecutive-month period from the E-Verify requirements. Enacts new G.S. 64-39 to prohibit penalties against an employer if a violation or alleged violation of G.S. 64-26 (Verification of employee work authorization) was with respect to an employee who possesses a valid restricted drivers permit or a valid restricted identification card.

Require Undocumented Alien Drivers to Obtain Restricted Drivers Permits. Amends G.S. 20-4.01 to add a definition of criminal history that includes a history of conviction of state or federal crimes, misdemeanor or felony, that includes the (1) criminal offenses set forth in the specified Articles of G.S. Chapter 14, including endangering executive and legislative officers, homicide, and public intoxication; (2) possession or sale of drugs in violation of the NC Controlled Substances Act; and (3) alcohol-related offenses. Amends G.S. 20-7(f)(3) to provide that the durations in the statute also apply to permits and identification cards, in addition to licenses. Adds to the conditions upon which the durations do not apply, a determination that a restricted drivers permit or a restricted identification card should be issued pursuant to new (t); provides that a restricted drivers permit or restricted id card cannot expire later than one year after the date of issuance. Amends G.S. 20-7(i) to add restricted drivers permits and restricted identification cards to those subject to the fee schedule. Provides that the fee for an initial one-year restricted permit or an initial one-year restricted id card is to be set by the Secretary of Transportation. Sets a \$25 fee for renewal of a restricted drivers permit or a restricted id card. Enacts new G.S. 20-7(t) providing that the Division of Motor Vehicles will issue a restricted drivers permit or a restricted id card to

an applicant not lawfully present in the US who meets the four specified requirements. Also requires that such an issued permit or id card meet specific format requirements that distinguish it from other permits and cards, and requires the certain information be included. Provides that when the laws refer to a drivers license, the term includes a restricted drivers permit, except when the law confers a benefit, privilege, or right for which lawful presence is a prerequisite. Amends G.S. 20-15 to require canceling and revoking the restricted drivers permit of a person convicted of violation G.S. 20-313 (Operation of motor vehicle without financial responsibility a misdemeanor). Effective October 1, 2013.

Impoundment and Sale of Vehicles for Driving while License Revoked, Driving Without a License, and Driving While Failing to Maintain Financial Responsibility. Enacts new G.S. 20-28.10 providing as follows. Allows a judge to determine whether a vehicle driven at the time of the underlying offense becomes subject to an order of forfeiture and specifies times at which the determination may be made. Defines an underlying violation as (1) driving while license is revoked under an impaired drivers license revocation, (2) a violation of G.S. 20-313 (Operation of motor vehicle without financial responsibility a misdemeanor), or (3) driving without a license or a restricted drivers permit. Requires the vehicle to be subject to a forfeiture order if the greater weight of the evidence shows that the defendant is guilty of an underlying violation, unless listed conditions are satisfied. Specifies requirement of notifying possible innocent parties of the forfeiture. Provides for notification to the insurance company of damage caused to a vehicle while committing the underlying offense or incident to the seizure, and requires that claim proceeds be paid to the clerk of superior court. Sets out the procedure and hearing requirements for the disposal of a vehicle that has been ordered forfeited, and has not been released to an innocent owner. Provides for the process of releasing a motor vehicle to an innocent owner. Provides the process for releasing a forfeited vehicle to the lienholder. Orders authorizing the release of a seized vehicle must require the payment of towing and storage charges incurred because of the seizure and impoundment. Establishes the duties of an officer concerning seizing a vehicle and for providing notice of seizure. Sets out requirements for providing notice of impoundment to the Division of Motor Vehicles, any lienholder, and to an innocent owner. Requires additional specified notifications to lienholders.

Requires a magistrate to review the affidavit of impoundment presented by the seizing officer and order the vehicle to be held if the magistrate determines that the requirements of the statute have been met. If the magistrate determines that the requirements have not been met, an order must be made to release the vehicle. Provides for effecting an order of seizure. Provides procedures for the towing of a seized motor vehicle and for custody of the vehicle. Allows a motor vehicle owner, other than the driver at the time of the underlying offense, to apply for pretrial release of the vehicle and specifies the conditions under which the vehicle may be released. Also allows a nondefendant motor vehicle owner to petition for a pretrial determination that the petitioner is an innocent owner and sets out relevant procedures. Allows a lienholder to file a petition requesting the court to order pretrial release of a seized motor vehicle, and specifies the procedure for doing so.

Provides for the claiming and handling of insurance proceeds when the vehicle is damaged incident to the conduct that gave rise to the seizure of the vehicle. Provides for the expedited sale

of seized vehicles in specified circumstances. Allows for the removal of personal property from the vehicle.

Requires notice to the attorney for the county board of education on all proceedings regarding underlying offenses related to a vehicle subject to forfeiture. Also gives the attorney the right to appear and be heard on all issues related to the seized vehicle.

If the driver is convicted of an underlying offense, the defendant is to be ordered to pay the costs paid or owing for the towing, storage, and sale of the vehicle to the extent the costs were not covered by the sale proceeds. Requires trials of underlying offenses to be scheduled on the seizing officer's next court date, or within 30 days of the offense, whichever is first. Prohibits continuing the case unless specified conditions are met. Provides for the release of the vehicle upon a dismissal or finding of not guilty. Includes further guidance on the sale of a forfeited vehicle, use of the sale proceeds, and retention of a vehicle. Provides that an order of forfeiture is stayed pending appeal.

Effective December 1, 2013, and applies to offenses committed on or after that date.

H786. RECLAIM NC ACT. (May 2, 2013)

AN ACT TO ENACT THE REASONABLE ENACTMENT OF COMPREHENSIVE LEGISLATION ADDRESSING IMMIGRATION MATTERS IN NORTH CAROLINA (RECLAIM NC) ACT.

House committee substitute makes the following changes to the 1st edition.

Amends G.S. 15A-533(f), which creates a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required for the safety of the community if the person is unlawfully present in the US and there exists reasonable cause to believe that they committed a certain, specified offense, establishing that when the rebuttable presumption is based on a driving offense, it must be based on a driving offense that requires a mandatory drivers license revocation on a first conviction. Establishes that for a rebuttable presumption based on a drug offense, it must be a drug offense other than a violation for mere possession of a controlled substance. Also provides that the presumption applies if the person committed a violent felony or any criminal offense other than a violation of G.S. 14-33(a) that includes assault as any essential element of the offense or as an aggravating factor.

Creates new G.S. 15A-534.7 (Pretrial release of certain undocumented aliens), establishing that in cases in which the defendant is an alien that (1) is not lawfully present in the US, and (2) is charged with a felony or a Class A1 misdemeanor, the judicial official will require the defendant to execute a secured appearance bond as a condition of pretrial release.

Amends G.S. 148-2.1, providing that an undocumented alien prisoner will only be required to reimburse the state for the actual cost of incarceration after becoming convicted of a crime (previously, a conviction for a crime was not required to compel reimbursement).

Adds to the requirements that must be met in G.S. 64-10 for admitting a record relating to immigration status without further foundation or testimony. Provides procedure for when an attorney files or fails to file a written objection.

Amends G.S. 15A-306 (Certain documents not acceptable as identification), providing that a matricula consular or other similar document issued by a consulate or embassy of another country, except for a valid passport, is not acceptable in determining a person's actual identity or residency (previously, an exception for a valid passport was not provided).

Amends G.S. 153A-449(b), 160A-20.1(b), 143-129(j), 143-48.5, and 147-33.95(g), making a clarifying change, deleting language that required registering and participating in E-verify to verify the work authorization of new employees and replacing it with a requirement to comply with the requirements of Article 2 of GS Chapter 64 (provisions which require the use of E-verify).

Amends the definition of criminal history in G.S. 20-4.01 to exclude disturbing the public peace, misdemeanor marijuana possession, worthless checks, misdemeanor larceny, shoplifting, or public drunkenness.

Amends G.S. 20-7(t)(5), provisions allowing the issuance of a restricted drivers permit or restricted identification card to an applicant that is present in the US and meets certain requirements, including meeting all other requirements for a driver's license, including proof of financial responsibility to provide that, for the purposes of this section, the insurance policy that is the basis of proof for financial responsibility is required to have been prepaid for a period that is at least as long as the entire period during which the restricted drivers permit will be effective (previous edition did not establish requirements for proof of financial responsibility).

Deletes Section 10, new G.S. 20-28.10, from the act.

Creates new G.S. 20-28.10, (Seizure, impoundment, forfeiture of motor vehicles for certain other offenses under this Chapter), establishing that a vehicle driven by a person who commits either (1) a violation of G.S. 20-313, (2) driving without a license under G.S. 20-7, or (3) driving without a restricted drivers permit under G.S. 20-7, will be subject to seizure, impoundment, and forfeiture. Sets out conditions, which when satisfied, prevents a vehicle from becoming subject to an order of forfeiture. Provides that the laws and procedures by which the seizure, impoundment, and forfeiture of vehicles, as provided for under this section, will be the same as those set forth in G.S. 20-28.2 through 20-28.9. Provides that wherever those statutes refer to a particular underlying offense, for the purposes of this section, it should be construed to refer to the applicable violation or offense as provided for in subsection (a) of this section. Additionally, for the purposes of this section, an innocent owner refers to a person that did not know and had no reason to know that the defendant was engaging in a violation of subsection (a).

Adds a severability clause.

ASSUMPTIONS AND METHODOLOGY:

Fiscal Impact Summary: The following analysis pertains exclusively to the non-criminal provisions and requirements of HB 786. A separate incarceration note, provided for the second edition of HB 786, addresses the associated modifications to criminal offenses.

Fiscal Research cannot estimate the proportion of undocumented alien drivers which might qualify for the new restricted drivers permit or ID, based on fulfillment of all eligibility requirements. Consequently, potential revenue impacts, card production and administrative costs are indeterminate. According to Department of Transportation (DOT) estimates, the potential costs of modifications to information technology and print systems could approach \$698,470 and \$800,000, respectively. However, based on current IT initiatives and resource constraints, the Department cannot accurately project an implementation date.

Part VIII, Section 8 of the bill restricts counties, municipalities, and State government from contracting with a contractor or subcontractors unless the contractor or subcontractors have complied with Article 2 of G.S. 64 directing work verification through the E-Verify system administered by the federal Department of Homeland Security. Section 8 of the bill also restricts the Commissioner of Labor from pursuing any violation or alleged violation of G.S. 64-26 in the employee possessed a valid restricted drivers permit or identification card.

Currently, the Department of Labor is responsible for investigating valid complaints against employers that are in violation of E-Verify requirements established in G.S. 64. The bill does not expand E-Verify enforcement authority currently provided to the Department of Labor. As a result, the Department of Labor would investigate a valid complaint against an employer regardless of any contractual relationship with a local government. Since the Department of Labor's enforcement authority is not changed, no fiscal impact is anticipated.

Requiring counties, municipalities, and the State to verify that potential contractors or subcontractors are in compliance with Article 2 of G.S. 64 could pose additional administrative requirements prior to executing contracts; however, these administrative costs are should remain minimal.

Part IX, Section 9 of the bill amends Chapter 20 of the General Statutes to create new forms of identification – restricted drivers permits and identification cards – which are valid for one-year and issuable to undocumented alien drivers who meet certain eligibility requirements, including:

- Verification of unlawful presence;
- Verification that the applicant does not have a criminal history;
- Presentation of a valid birth certificate, passport, or copy of IRS W-2 or W-7 form;
- Demonstration of residency for at least one year, beginning prior to April 1, 2013;
- Demonstration of financial responsibility, prepaid for the duration of the restricted drivers permit; and,
- Satisfaction of all other requirements for a driver license.

Initial fees for the new restricted drivers permit or ID are to be set by the Secretary of Transportation, equal to the actual costs of processing applications and producing the card, with a

renewal fee of \$25.00. Amended G.S. 20-7(u) also requires that DMV develop the restricted drivers permit or ID in a distinguishing vertical format, which also:

- clearly denotes the limited duration of the permit or ID;
- utilizes an identification number with a prefix exclusive to restricted drivers permits and IDs;
- includes an electronically readable image of the holder's thumbprint; and,
- states that the card is not valid as a means of demonstrating eligibility for voter registration or public benefits, for legitimizing presence, or for any other purpose.

Further, Section 9(f) authorizes DMV to revoke the restricted drivers permit or ID upon conviction of operating a vehicle without financial responsibility, and Section 10 authorizes seizure, impoundment, and forfeiture of vehicles driven in violation of financial responsibility requirements and driving without a license.

As of 2010, the Pew Research Center estimated that the unauthorized immigrant population within North Carolina ranged from 240,000 to 425,000 persons. However, of this potential range, Fiscal Research cannot estimate the proportion of undocumented alien drivers which might qualify for the new restricted drivers permit or ID, based on fulfillment of the enumerated and existing eligibility requirements. Accordingly, potential revenue impacts, card production and administrative costs are indeterminate.

The Department of Transportation estimates that additional costs will be incurred to modify information technology systems, including the Next Generation Secure Driver License System (NGSDLS) which is currently under development. To stabilize existing processes for system development, the NGSDLS project has declared a "code freeze" on all certification-related programs effective until the end of the project. Because several of these programs are impacted by the required changes, completion of the required system modifications may not be feasible prior to the October 1, 2013 effective date. However, given the current project status, DOT could not provide an alternate target date for implementation.

According to the Department of Transportation, Information Technology Section (DOT-IT), modifications are required to the State Automated Driver License System (SADLS), State Titling and Registration System (STARS), Next Generation Secure Driver License System (NGSDLS), and Liability Insurance Tracking and Enforcement System (LITES) to implement the proposed requirements. Because the NGSDLS project is establishing a graphic user interface for SADLS mainframe programs and screens, code changes to support system processes for new card templates, identity/document verification, fees and expiration dates must also be applied to the NGSDLS. In addition, new interfaces must be developed with LITES and insurance companies to verify coverage for restricted permit/ID holders and also verify issuance of a valid restricted permit/ID. Further, STARS modifications must apply titling and registration service restrictions to vehicles seized due to restricted permit/ID violations, and also generate new batch letters for vehicle seizure notices. To implement these requirements, DOT-IT projects a total of 4,386 development labor hours at an estimated cost of \$698,470, of which approximately 2,000 hours (\$130,000) may be accommodated with existing resources.

In addition to creating and maintaining new card templates, DMV must also acquire the technical capability to capture and store an electronically readable thumbprint, incorporate an alpha

character into the driver license/ID number, and reprogram the print file and print stream for the driver license/identification card printing facility. Additionally, DMV expects that card materials and printing machines must be updated to accommodate printing of a readable thumbprint overlay. Although DMV could not provide an estimate of the costs of collecting, transmitting, and storing thumbprints, preliminary estimates of vendor cost for printing and card production requirements total \$800,000. Cost estimates could not be obtained from the NGSDLS vendor to assess the potential impact of inclusion of these modifications as part of the NGSDLS project.

SOURCES OF DATA: Department of Transportation, Division of Motor Vehicles, Department of Labor

TECHNICAL CONSIDERATIONS: None

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