

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH50251-MDf-63 (2/18)

Short Title: NC Illegal Immigration Prevention Act.

(Public)

Sponsors: Representatives Holloway, Blust, Cleveland, and Neumann (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**PART I. SHORT TITLE**

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

**PART II. REQUIRE COUNTIES AND CITIES TO USE THE FEDERAL WORK AUTHORIZATION PROGRAM TO VERIFY THE WORK AUTHORIZATION OF NEW EMPLOYEES**

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

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

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

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

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

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

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





- 1           a.     Possess a valid North Carolina drivers license or identification card  
2                 issued by the North Carolina Division of Motor Vehicles.  
3           b.     Are eligible to obtain a North Carolina drivers license or  
4                 identification card in that they meet the requirements set forth in  
5                 Article 2 or Article 2C of Chapter 20 of the General Statutes.  
6           c.     Possess a valid drivers license or identification card from another  
7                 state where the license requirements are at least as strict as those in  
8                 North Carolina, as determined by the Commissioner of Motor  
9                 Vehicles or the Commissioner's designee. The Commissioner of  
10                Motor Vehicles, or his designee, shall publish on the Web site of the  
11                North Carolina Division of Motor Vehicles a list of states where the  
12                license requirements are at least as strict as those in this State.

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

15       **"§ 64-12. Applicability of Article.**

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

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

30       **"§ 64-13. Compliance with Article.**

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

- 34           (1)     The applicability of this Article to the contractor, subcontractor, and  
35                 sub-subcontractor.  
36           (2)     The compliance with this Chapter by the contractor and any subcontractor or  
37                 sub-subcontractor.

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

40       **"§ 64-14. No sanction for contractors that comply with this Article in good faith.**

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

44       **"§ 64-15. Knowingly making a false statement a felony.**

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

47       **"§ 64-16. Local ordinances or policies hindering this Article not permitted.**

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

51       **"§ 64-17. Forms and rule making.**

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

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

4             "(i) No contract subject to this section may be awarded by any board or governing body  
5 of the State, institution of the State government, or any political subdivision of the State, unless  
6 the contractor complies with the requirements of Article 2 of Chapter 64 of the General  
7 Statutes, where applicable."

8  
9     **PART IV. REQUIRE PRIVATE EMPLOYERS TO USE THE FEDERAL WORK**  
10 **AUTHORIZATION PROGRAM; PROHIBIT THE HIRING OF UNAUTHORIZED**  
11 **ALIENS**

12  
13             **SECTION 4.(a)** Chapter 64 of the General Statutes is amended by adding a new  
14 Article to read:

15   "Article 3.

16   "Employment of Unauthorized Aliens.

17 **"§ 64-20. Definitions.**

18     The following definitions apply in this Article:

- 19             (1) Agency. – Any agency, department, board, or commission of this State, a  
20 county, or city that issues a license for purposes of operating a business in  
21 this State.
- 22             (2) Employ. – Hiring an employee after January 1, 2010.
- 23             (3) Employee. – Any person who provides services or labor for an employer in  
24 this State for wages or other remuneration. This term does not include an  
25 independent contractor.
- 26             (4) Employer. – Any individual or type of organization that transacts business in  
27 this State, that has a license issued by an agency in this State, and that  
28 employs one or more employees in this State. In the case of an independent  
29 contractor, the term means the independent contractor and does not mean the  
30 person or organization that uses the contract labor. The term does not  
31 include governmental organizations.
- 32             (5) Federal work authorization program. – Any of the electronic verification of  
33 work authorization programs operated by the United States Department of  
34 Homeland Security or any equivalent federal work authorization program  
35 operated by the United States Department of Homeland Security to verify  
36 information of newly hired employees, pursuant to the Immigration Reform  
37 and Control Act of 1986 (IRCA), Public Law 99-603.
- 38             (6) Independent contractor. – Any individual or entity that carries on an  
39 independent business, that contracts to do a piece of work according to the  
40 individual's or entity's own means and methods, and that is subject to control  
41 only as to results. Whether an individual or entity is an independent  
42 contractor is to be determined on a case-by-case basis through various  
43 factors including whether the individual or entity:
- 44                     a. Supplies the tools or materials.
- 45                     b. Makes services available to the general public.
- 46                     c. Works or may work for a number of clients at the same time.
- 47                     d. Has an opportunity for profit or loss as a result of labor or service  
48 provided.
- 49                     e. Invests in the facilities for work.
- 50                     f. Directs the order or sequence in which the work is completed.
- 51                     g. Determines the hours when the work is completed.

- 1           (7) Intentionally. – With respect to a result or to particular conduct, acting with  
2           the objective of causing that result or engaging in that conduct.
- 3           (8) Knowingly employ an unauthorized alien. – The actions described in 8  
4           U.S.C. § 1324a(a)(1)(A). This term shall be interpreted consistently with any  
5           applicable federal rules and regulations.
- 6           (9) License. – Any agency permit, certificate, approval, registration, charter, or  
7           similar form of authorization that is required by law in order to operate a  
8           business in this State. This term does not include any professional license.
- 9           (10) Social security number verification service. – The program administered by  
10           the Social Security Administration to verify the social security numbers of  
11           existing workers or any of its successor programs.
- 12           (11) Unauthorized alien. – An alien who does not have the legal right or  
13           authorization under federal law to work in the United States as described in  
14           8 U.S.C. § 1324a(h)(3).

15 **"§ 64-21. Effect of violations of federal immigration law.**

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

24 **"§ 64-22. Knowingly employing unauthorized alien prohibited; penalties.**

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

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

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

3           (1) The Attorney General or county attorney shall notify the United States  
4 Customs and Immigration Enforcement of the presence of the unauthorized  
5 alien.

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

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

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

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

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

20           a. Shall order the employer to terminate the employment of all  
21 unauthorized aliens.

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

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

1 agencies shall suspend the licenses according to the court's order.  
2 The court shall send a copy of the court's order to the Attorney  
3 General, and the Attorney General shall maintain the copy pursuant  
4 to subsection (f) of this section.

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

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

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

31 (3) The violation shall be considered:

- 32 a. A first violation by an employer at a business location if the violation  
33 did not occur during a probationary period ordered by the court under  
34 this subsection.
- 35 b. A second violation by an employer at a business location if the  
36 violation occurred during a probationary period ordered by the court  
37 under this subsection.

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

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

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

49 (i) For the purposes of this section, an employer who establishes that it has complied in  
50 good faith with the requirements of 8 U.S.C. § 1324a(b) establishes an affirmative defense that  
51 the employer did not knowingly employ an unauthorized alien. For purposes of this subsection,

1 an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b)  
2 notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the  
3 requirements, so long as there is a good faith attempt to comply with the requirements.

4 **"§ 64-23. Article does not require action that is contrary to federal or State law.**

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

7 **"§ 64-24. Employers must use federal work authorization program.**

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

12 **"§ 64-25. Discharge of authorized employee while employer simultaneously employs an**  
13 **unauthorized alien is an unfair trade practice.**

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

18  
19 **PART V. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

20  
21 **SECTION 5.** Article 20 of Chapter 15A of the General Statutes is amended by  
22 adding a new section to read:

23 **"§ 15A-407. Enforcement of federal immigration laws.**

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

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

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

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

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

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

44 **"Chapter 84B.**

45 **"Immigration Assistance Registration Act.**

46 **"§ 84B-1. Short title.**

47 This Chapter shall be known as the 'Immigration Assistance Registration Act.'

48 **"§ 84B-2. Purpose.**

49 The purpose of this Chapter is to establish and enforce ethical standards for immigration  
50 assistance services provided by individuals who are not licensed attorneys.

51 **"§ 84B-3. Definitions.**



1        The following definitions apply in this Chapter:

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

22    **"§ 84B-4. Registration required.**

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

29            (b)    The Secretary of State may collect a fee from any person providing immigration  
30                    assistance services not exempt under this Chapter in an amount not to exceed twenty dollars  
31                    (\$20.00) to cover the administrative costs associated with establishing and maintaining the  
32                    registry.

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

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

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

40    **"§ 84B-5. Exemptions.**

41        The following persons are exempt from this Chapter:

- 42            (1)    An attorney licensed to practice law in this State or an attorney licensed to  
43                    practice law in any other state or territory of the United States or in any  
44                    foreign country when acting with the approval of a judge having lawful  
45                    jurisdiction over an immigration matter.
- 46            (2)    A legal intern, clerk, paralegal, or person in a similar position employed by  
47                    and under the direct supervision of a licensed attorney meeting the  
48                    requirements in subdivision (1) of this section and providing immigration  
49                    assistance services.

- 1           (3) A nonprofit organization recognized by the Board of Immigration Appeals  
2 under 8 C.F.R. § 292.2(a) and employees of those organizations accredited  
3 under 8 C.F.R. § 292.2(d).
- 4           (4) Any organization employing or desiring to employ an alien or nonimmigrant  
5 alien, where the organization, its employees, or its agents provide advice or  
6 assistance in immigration matters to alien or nonimmigrant alien employees  
7 or potential employees without compensation from the individuals to whom  
8 the advice or assistance is provided.

9 **"§ 84B-6. Immigration assistance services permitted.**

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

- 12           (1) Complete a government agency form requested by the customer if the  
13 completion of that form does not involve the use of legal judgment.
- 14           (2) Transcribe responses on a government agency form related to an  
15 immigration matter without advising a customer as to his or her answers on  
16 the form.
- 17           (3) Translate information on forms for a customer and translate the customer's  
18 answers to questions posed on the forms.
- 19           (4) Secure for a customer supporting documents currently in existence, such as a  
20 birth certificate or marriage certificate, when needed to submit with  
21 government agency forms.
- 22           (5) Translate documents from a foreign language into English.
- 23           (6) Notarize signatures on government agency forms if the person performing  
24 the service is a notary public commissioned in this State and is lawfully  
25 present in the United States.
- 26           (7) Make referrals, without a fee, to attorneys who represent clients in  
27 immigration matters.
- 28           (8) Prepare or arrange for the preparation of photographs and fingerprints.
- 29           (9) Arrange for the performance of medical testing, including X-rays and AIDS  
30 tests, and arrange for the test results to be obtained.
- 31           (10) Conduct English language and civics courses.
- 32           (11) Perform any other services the Secretary of State, by rule, deems appropriate  
33 pursuant to this Chapter.

34 **"§ 84B-7. Posting signs; advertisements.**

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

44           (b) Every person providing immigration assistance service who is not an attorney and  
45 advertises immigration assistance services in a language other than English, whether by radio,  
46 television, signs, pamphlets, newspapers, or other written communication, with the exception of  
47 a single desk plaque, shall include in the document, advertisement, stationery, letterhead,  
48 business card, or other comparable written material the following notice in English and the  
49 language in which the written communication appears: 'I AM NOT AN ATTORNEY  
50 LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT  
51 FEES FOR LEGAL ADVICE.' If the notice is in writing, the notice must appear in a

1 conspicuous manner, and if the advertisement is by radio or television, the statement may be  
2 modified but must include substantially the same message.

3 **"§ 84B-8. Prohibited conduct.**

4 A person providing immigration assistance services who is not exempt under this Chapter  
5 shall not:

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

30 **"§ 84B-9. Violations; penalties.**

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

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

37  
38 **PART VII. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**  
39 **ILLEGAL IMMIGRANTS**

40  
41 **SECTION 7.(a)** G.S. 105-130.2 is amended by adding a new subdivision to read:

42 **"§ 105-130.2. Definitions.**

43 The following definitions apply in this Part:

44 ...

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

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

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

50 ...

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

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

6           **"§ 105-134.1. Definitions.**

7           The following definitions apply in this Part:

8           ...

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

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

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

14           ...

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

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

20  
21 **PART VIII. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL**  
22 **IMMIGRANTS**

23  
24           **SECTION 8.(a)** G.S. 105-163.1 reads as rewritten:

25           **"§ 105-163.1. Definitions.**

26           The following definitions apply in this Article:

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

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

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

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

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

41           ...

42           (12a) Unauthorized alien. – Defined in G.S. 105-130.2.

43           ...."

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

46  
47 **PART IX. VERIFICATION OF LAWFUL PRESENCE REQUIRED TO RECEIVE**  
48 **PUBLIC BENEFITS**

49  
50           **SECTION 9.(a)** The General Statutes are amended by adding a new Chapter to  
51 read:

"Chapter 135A."Public Benefits."§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

(a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

a. Deliver in-kind services at the community level, including through public or private nonprofit agencies;

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

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

(6) Prenatal care.

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

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

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

(f) For any applicant who has executed an affidavit that the applicant is an alien lawfully present in the United States, the State agency or political subdivision shall verify eligibility for benefits through the SAVE program operated by the United States Department of

1 Homeland Security or a successor program designated by the United States Department of  
2 Homeland Security. Until eligibility verification is made, the affidavit may be presumed to be  
3 proof of lawful presence for the purposes of this section.

4 (g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent  
5 statement of representation in an affidavit executed under subsection (e) of this section shall,  
6 upon conviction thereof, be punished as a Class I felon.

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

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

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

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

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

## 27 28 **PART X. CREATE THE CRIME OF UNLAWFUL TRANSFER OR CONCEALMENT** 29 **OF AN ALIEN**

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

### 33 **"§ 64-6. Unlawful transfer or concealment of an alien.**

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

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

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

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

2           (1)   Programs, services, or assistance (such as soup kitchens, crisis counseling  
3           and intervention, and short-term shelter) specified by the United States  
4           Attorney General, in the United States Attorney General's sole discretion  
5           after consultations with appropriate federal agencies and departments, that  
6           do all of the following:

7           a.    Deliver in-kind services at the community level, including through  
8           public or private nonprofit agencies.

9           b.    Do not condition the provision of assistance, the amount of  
10           assistance provided, or the cost of assistance provided on the  
11           individual recipient's income or resources.

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

13           (2)   Shelter provided for strictly humanitarian purposes or provided under the  
14           federal Violence Against Women Act, so long as the shelter is not provided  
15           in furtherance of or in an attempt to conceal a person's illegal presence in the  
16           United States.

17           (3)   Churches or other religious institutions that are recognized as 501(c)(3)  
18           organizations by the Internal Revenue Service.

19       (e)    Providing health care treatment or services to a natural person who is in the United  
20       States unlawfully is not a violation of this section."

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

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

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

34           (1)   Making financial or credit transactions in the other person's name.

35           (2)   Obtaining anything of value, benefit, or advantage.

36           (3)   Avoiding legal consequences.

37           (4)   Obtaining employment."

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

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

42       "**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

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

1  
2  
3

**SECTION 15.** Except where otherwise provided, this Act becomes effective  
January 1, 2010.