May 9, 2006

S 1223. SECURITY AND IMMIGRATION COMPLIANCE. Filed 5/9/06. *TO ESTABLISH THE NORTH CAROLINA SECURITY AND IMMIGRATION COMPLIANCE ACT TO PROVIDE FOR THE COMPREHENSIVE REGULATION OF PERSONS IN THIS STATE WHO ARE NOT LAWFULLY PRESENT IN THE UNITED STATES*. To be summarized in tomorrow's *Daily Bulletin.*

Intro. by Pittenger. GS 14, 15A, 84B, 95, 105, 135A, 162

May 10, 2006

S 1223. SECURITY AND IMMIGRATION COMPLIANCE. Filed 5/9/06. *TO ESTABLISH THE NORTH CAROLINA SECURITY AND IMMIGRATION COMPLIANCE ACT TO PROVIDE FOR THE COMPREHENSIVE REGULATION OF PERSONS IN THIS STATE WHO ARE NOT LAWFULLY PRESENT IN THE UNITED STATES*. The act is divided into seven substantive parts addressing public employer participation in the federal work authorization program; criminalization of sexual servitude trafficking; facilitation of enforcement of federal immigration laws; determination of the immigration status of persons who are jailed for felony or driving offenses; establishment of an immigration assistance registration act; elimination of income tax deductions for wages paid to illegal immigrants; ensuring tax withholding on wages paid to illegal immigrants; and verification of a person's lawful presence in the United States as a prerequisite to receiving public benefits. Except as otherwise provided below, the act is effective January 1, 2007.

Part II of the Act amends GS Chapter 95 by adding a new Article 24 (comprised of new GS 95-280 through GS 95-283) entitled Workplace Immigration Compliance. The proposed new article requires all NC public employers to register and participate in the electronic verification of work authorization programs operated by the US Department of Homeland Security (US DHS), and prohibits the making of contracts for the physical performance of services between public employers and contractors unless the contractor has registered and participates in US DHS's new employee work authorization programs. The article is effective July 1, 2007, for public employers and contractors with 500 or more employees; the effective date is July 1, 2008, for public employers and contractors with 100 or more employees; and July 1, 2009, for all public employers and contractors. The new article directs the Commissioner of Labor to adopt rules and forms to implement the article and the Department of Transportation to adopt any rules necessary to apply the article to any contract relating to public transportation.

Part III, section 3.(a), amends GS Chapter 14, Article 10 (Kidnapping and Abduction) by creating a new section GS 14-43.4, which makes it a Class F felony to traffick a person for sexual servitude. Trafficking a person for sexual servitude is defined as recruiting, enticing, harboring, transporting, providing, obtaining, subjecting, or maintaining another person for the purpose of any sexual activity as defined in GS 14-190.13 (definitions of certain sexual offenses involving minors) when that activity is exchanged for something of value and/or is induced by coercion or deception. The offense is a Class E felony if the victim is a minor. Part II, section 3.(b) amends GS 14-43.2 (Involuntary Servitude) by replacing current subsection (a) (the definition of "involuntary servitude") with a new subsection (a) that defines the term "deception," and adds a new definition of "involuntary servitude" that (1) adds deception (in addition to coercion and intimidation) to the means by which persons may be unlawfully held against their will and (2) further defines coercion and intimidation to include (a) threatening to expose information that might subject a victim to criminal or immigration proceedings, hatred, contempt, or ridicule, (b) destroying or concealing a passport or immigration document or any other government-issued identification, or (c) providing a controlled substance to the victim. Subsection 3.(b) also amends GS 14-43.2(b) by providing that while violation of the statute is a Class F felony if the victim is an adult, it is a Class E felony if the victim is a child. Subsection 3.(c) amends GS 14-39 (Kidnapping) by adding new subdivision (a)(5) which provides that confining, restraining, or removing a person without consent for the purpose of trafficking the person for sexual servitude in violation of (new) GS 14-43.4 also constitutes kidnapping. Section 3.(d) amends GS 15A-830 (a)(7) (the definition of "victim" under the Crime Victims' Rights Act) to include in the definition of victim in subdivision (a)(7)b. persons against whom a violation of new GS 14-43.4 (trafficking for

sexual servitude) has been committed. Part III will be effective on December 1, 2006, and will apply to offenses committed on or after that date.

Part IV amends GS Chapter 15A, Article 20 (Arrest) by adding new GS 15A-407, which directs the Secretary of Crime Control and Public Safety to negotiate and enter into, along with the Governor, a memorandum of understanding on behalf of NC with the United States Department of Justice or the United States Department of Homeland Security pursuant to which NC law enforcement officers will be trained and certified so as to enforce federal immigration and customs laws while performing their state-authorized duties.

Part V amends GS Chapter 162 (Sheriff) by adding new GS 162-62, which provides that jail administrators are to make reasonable efforts to determine the nationality of any person charged with a felony or an impaired driving offense who is confined in the county jail or another confinement facility. If the prisoner is a foreign national, the jail administrator is directed to make a reasonable effort to verify that the prisoner is in the United States legally either from documents in possession of the prisoner or by making an inquiry of the US DHS. If it is determined that the prisoner is in the country illegally, then the jail administrator must notify US DHS.

Part VI enacts a new GS Chapter 84B entitled the Immigration Assistance Registration Act, whose purpose is to establish and enforce ethical standards for non-attorneys providing immigration assistance services. The Act requires any person who provides immigration assistance services to register with the Secretary of State and authorizes the Secretary to charge a fee of no more than $20 to cover administrative costs. Attorneys and those working under their supervision are exempt from the Act, as are nonprofit organizations accredited under 8 CFR292.2(a) and (d), and organizations desiring to employ aliens or nonimmigrant aliens. The Act limits the kinds of services that persons registered as immigration assistance service providers may perform to (1) completing those forms that do not require the use of legal judgment, (2) transcribing customer responses onto government agency forms, (3) translating information on forms or customer answers to forms, (4) helping the customer to secure supporting documents, and (5) arranging for photographing, fingerprinting, and medical testing. The Act explicitly prohibits providers of immigration assistance services from giving any legal advice or allowing customers to believe that they possess any special professional skills or knowledge with respect to immigration matters and requires them to post conspicuous notices to that effect. Violation of the provisions of the Act is a Class 1 or 2 misdemeanor subject to a fine of up to $1,000 for each violation.

Part VII amends GS 105-130.2, 105-130.5(a), 105-134.1, and 105-134.6(c) (on corporate and individual income tax) to provide that amounts in excess of $600 that are paid to unauthorized aliens as wages or compensation are to be added to federal taxable income in determining NC taxable income to the extent those amounts are not included in federal taxable income. These changes are effective for taxable years beginning on or after January 1, 2007.

Part VIII amends GS 105-163.1 (the definitions section for withholding and estimated state income tax for individuals) by adding new subsection (2)c. which includes in the definition of "contractor" an "unauthorized alien who performs in this State for compensation other than wages for any personal services."

Part IX enacts a new GS Chapter 135A entitled "Public Benefits" that requires every state agency or political subdivision to verify that any person 18 years of age or older who applies for state or local public benefits or for federal public benefits that are administered by a state agency or political subdivision is in the United States legally. The act lists certain kinds of public benefits for which verification of legal presence is not required, including emergency medical treatment, short-term, non-cash emergency disaster relief, public health assistance for immunization against or symptoms of communicable diseases, and prenatal care. State agencies and political subdivisions are to verify eligibility for benefits by obtaining an affidavit from each applicant and by then confirming eligibility through the United States Department of Homeland Security's SAVE program. The Act also provides that any person making a false representation in an affidavit executed for the purposes of obtaining public benefits will be punished by a fine of not more than $1000 or imprisonment for one to five years.

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