March 20, 2007

S 1189. SECURITY AND IMMIGRATION COMPLIANCE . Filed 3/20/07. *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; 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, 2008.

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, requiring 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 prohibiting 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. 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 amends Article 20 (Arrest) of GS Chapter 15A, 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 US DHS 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 IV amends GS Chapter 162 (Sheriff) by adding a new GS 162-62 providing that jail administrators are to make reasonable efforts to determine the nationality of any person charged with a felony or an impaired driving offense. 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 V enacts a new GS Chapter 84B entitled the Immigration Assistance Registration Act, establishing and enforcing 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. The act exempts attorneys and those working under their supervision, nonprofit organizations accredited under 8 CFR292.2(a) and (d), and organizations desiring to employ aliens or nonimmigrant aliens that provide immigration advice without compensation. 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, (5) arranging for photographing, fingerprinting, and medical testing, (6) make attorney referrals, and (7) conduct English and civics courses. 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 VI amends GS 105-130.2, 105-130.5(a), 105-134.1, and 105-134.6(c) (corporate and individual income tax) to provide that amounts in excess of $600 that are paid to an unauthorized alien as wages or compensation must 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 VII amends GS 105-163.1 (the definitions section for withholding and estimated state income tax for individuals) to include in the definition of "contractor" from whose compensation taxes must be withheld an "unauthorized alien who performs any personal services in this State for compensation other than wages." Also makes conforming changes. Effective January 1, 2007.¶ Part VIII enacts a new GS Chapter 135A entitled "Public Benefits", effective January 1, 2007, requiring state agencies 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 public benefits that do not require verification of legal presence, 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. Requires state agencies and political subdivisions to verify eligibility for benefits by obtaining an affidavit from each applicant and confirming eligibility through the US DHS alien verification program. Punishes any person knowingly making a false representation in an affidavit executed for the purposes of obtaining public benefits by a fine of not more than $1000, imprisonment for one to five years, or both.

Effective January 1, 2008.

Intro. by Allran. GS 15A, 84B, 95, 105, 162