

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE DRH50436-MD-55 (3/29)**

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

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

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Referred to:

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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 PUBLIC AND PRIVATE EMPLOYERS TO REGISTER AND PARTICIPATE IN THE FEDERAL WORK AUTHORIZATION PROGRAM TO VERIFY INFORMATION ON ALL NEW EMPLOYEES**

**SECTION 2.** Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 24.

"Workplace Immigration Compliance.

**"§ 95-280. Definitions.**

The following definitions apply in this Article:

(1) Commissioner. – The Commissioner of the North Carolina Department of Labor.

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

8           (3) Public employer. – Every State agency, department, or institution of  
9 the State or any local political subdivision of the State.

10          (4) Subcontractor. – A subcontractor, contract employee, staffing agency,  
11 or any contractor.

12 **"§ 95-281. Employer verification of work authorization.**

13          (a) Every public and private employer shall register and participate in the federal  
14 work authorization program to verify information of all new employees.

15          (b1) No public or private employer shall enter into a contract for the physical  
16 performance of services within this State unless the contractor registers and participates  
17 in the federal work authorization program to verify information of all new employees.

18          (b2) No contractor or subcontractor who enters a contract with a public or private  
19 employer shall enter into such a contract or subcontract in connection with the physical  
20 performance of services within the State unless the contractor or subcontractor registers  
21 and participates in the federal work authorization program to verify information of all  
22 new employees.

23          (c) Subsections (b1) and (b2) of this section shall apply as follows:

24           (1) Beginning January 1, 2008, with respect to employers, contractors, or  
25 subcontractors employing 500 or more employees.

26           (2) Beginning April 1, 2008, with respect to employers, contractors, or  
27 subcontractors employing 100 or more employees.

28           (3) Beginning July 1, 2008, with respect to all employers, contractors, or  
29 subcontractors.

30 **"§ 95-282. Rule-making authority of Departments of Labor and Transportation.**

31          (a) Except as provided in subsection (b) of this section, the Commissioner shall  
32 adopt all rules and prescribe all forms necessary to administer and to effectuate the  
33 provisions of this Article and shall post those forms and rules on the official Department  
34 of Labor Web site.

35          (b) The Department of Transportation shall adopt rules and prescribe forms  
36 deemed necessary for the application of this Article to any contract or agreement  
37 relating to public transportation and shall publish the rules and regulations on the  
38 official Web site of the North Carolina Department of Transportation.

39 **"§ 95-283. Nondiscrimination in enforcement.**

40          This Article shall be enforced without regard to race, religion, gender, ethnicity, or  
41 national origin."

42  
43 **PART III. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION**  
44 **LAWS**

1  
2           **SECTION 3.** Article 20 of Chapter 15A of the General Statutes is amended  
3 by adding a new section to read:

4 **"§ 15A-407. Enforcement of federal immigration laws.**

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

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

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

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

23  
24 **PART IV. DETERMINATION OF NATIONALITY AND IMMIGRATION**  
25 **STATUS OF PERSONS JAILED UPON FELONY OR IMPAIRED DRIVING**  
26 **CHARGES**  
27

28           **SECTION 4.** Chapter 162 of the General Statutes is amended by adding a  
29 new section to read:

30 **"§ 162-62. Legal status of prisoners.**

31       (a) When any person charged with a felony or an impaired driving offense is  
32 confined for any period in a county jail, local confinement facility, district confinement  
33 facility, or satellite jail/work release unit, the administrator or other person in charge of  
34 the facility shall make a reasonable effort to determine the nationality of the person so  
35 confined.

36       (b) If the prisoner is a foreign national, the administrator or other person in  
37 charge of the facility holding the prisoner shall make a reasonable effort to verify that  
38 the prisoner has been lawfully admitted to the United States and if lawfully admitted,  
39 that the prisoner's lawful status has not expired. If verification of lawful status cannot be  
40 made from documents in the possession of the prisoner, verification shall be made  
41 within 48 hours through a query to the Law Enforcement Support Center (LESC) of the  
42 United States Department of Homeland Security or other office or agency designated  
43 for that purpose by the United States Department of Homeland Security. If the LESL or  
44 other office or agency determines that the prisoner has not been lawfully admitted to the

1 United States, the administrator or other person in charge of the facility holding the  
2 prisoner shall notify the United States Department of Homeland Security.

3 (c) Nothing in this section shall be construed to deny bond to a person or to  
4 prevent a person from being released from confinement when that person is otherwise  
5 eligible for release.

6 (d) The Department of Crime Control and Public Safety, after consultation with  
7 the North Carolina Sheriffs' Association, shall prepare and issue guidelines and  
8 procedures to be used to comply with the provisions of this section."

9  
10 **PART V. ESTABLISH IMMIGRATION ASSISTANCE REGISTRATION ACT**

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12 **SECTION 5.** The General Statutes are amended by adding a new Chapter to  
13 read:

14 **"Chapter 84B.**

15 **"Immigration Assistance Registration Act.**

16 **"§ 84B-1. Short title.**

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

18 **"§ 84B-2. Purpose.**

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

21 **"§ 84B-3. Definitions.**

22 The following definitions apply in this Chapter:

23 (1) Compensation. – A fee, property, services, promise of payment, or  
24 anything else of value.

25 (2) Employed by. – When a person is on the payroll of an employer and  
26 the employer deducts social security and withholding taxes from the  
27 employee's paycheck or when a person receives compensation from  
28 the employer on a commission basis or as an independent contractor.

29 (3) Immigration assistance services. – Any information or action provided  
30 or offered to customers or prospective customers related to  
31 immigration matters. Immigration assistance services shall not include  
32 legal advice recommending a specific course of legal action or  
33 providing any other assistance that requires legal analysis, legal  
34 judgment, or interpretation of the law.

35 (4) Immigration matter. – Any proceeding, filing, or action affecting the  
36 nonimmigrant, immigrant, or citizenship status of any person arising  
37 under either of the following:

38 a. Immigration and naturalization law, an executive order, or  
39 presidential proclamation of the United States or any foreign  
40 country.

41 b. Action of the United States Department of Labor, the United  
42 States Department of State, the United States Department of  
43 Homeland Security, or the United States Department of Justice.

44 **"§ 84B-4. Registration required.**

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

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

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

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

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

19 **"§ 84B-5. Exemptions.**

20       The following persons are exempt from this Chapter:

21           (1) An attorney licensed to practice law in this State or an attorney  
22 licensed to practice law in any other state or territory of the United  
23 States or in any foreign country when acting with the approval of a  
24 judge having lawful jurisdiction over an immigration matter.

25           (2) A legal intern, clerk, paralegal, or person in a similar position  
26 employed by and under the direct supervision of a licensed attorney  
27 meeting the requirements in subdivision (1) of this section and  
28 providing immigration assistance services.

29           (3) A nonprofit organization recognized by the Board of Immigration  
30 Appeals under 8 C.F.R. § 292.2(a) and employees of those  
31 organizations accredited under 8 C.F.R. § 292.2(d).

32           (4) Any organization employing or desiring to employ an alien or  
33 nonimmigrant alien, where the organization, its employees, or its  
34 agents provide advice or assistance in immigration matters to alien or  
35 nonimmigrant alien employees or potential employees without  
36 compensation from the individuals to whom the advice or assistance is  
37 provided.

38 **"§ 84B-6. Immigration assistance services permitted.**

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

41           (1) Complete a government agency form requested by the customer if the  
42 completion of that form does not involve the use of legal judgment.

- 1           (2)   Transcribe responses on a government agency form related to an  
2           immigration matter without advising a customer as to his or her  
3           answers on the form.
- 4           (3)   Translate information on forms for a customer and translate the  
5           customer's answers to questions posed on the forms.
- 6           (4)   Secure for a customer supporting documents currently in existence,  
7           such as a birth certificate or marriage certificate, when needed to  
8           submit with government agency forms.
- 9           (5)   Translate documents from a foreign language into English.
- 10          (6)   Notarize signatures on government agency forms if the person  
11          performing the service is a notary public commissioned in this State  
12          and is lawfully present in the United States.
- 13          (7)   Make referrals, without a fee, to attorneys who represent clients in  
14          immigration matters.
- 15          (8)   Prepare or arrange for the preparation of photographs and fingerprints.
- 16          (9)   Arrange for the performance of medical testing, including X-rays and  
17          AIDS tests, and arrange for the test results to be obtained.
- 18          (10)  Conduct English language and civics courses.
- 19          (11)  Perform any other services the Secretary of State, by rule, deems  
20          appropriate pursuant to this Chapter.

21 **"§ 84B-7. Posting signs; advertisements.**

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

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

42 **"§ 84B-8. Prohibited conduct.**

43       A person providing immigration assistance services who is not exempt under this  
44       Chapter shall not:

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

27 **"§ 84B-9. Violations; penalties.**

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

31           (b) Violations of this Chapter may result in a fine of up to one thousand dollars  
32 (\$1,000) for each violation. A fine charged pursuant to this Chapter shall not preempt or  
33 preclude additional appropriate civil or criminal penalties."

34  
35 **PART VI. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**  
36 **ILLEGAL IMMIGRANTS**  
37

38           **SECTION 6.(a)** G.S. 105-130.2 is amended by adding a new subdivision to  
39 read:

40 **"§ 105-130.2. Definitions.**

41           The following definitions apply in this Part:

42           ...

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

1           **SECTION 6.(b)** G.S. 105-130.5(a) is amended by adding a new subdivision  
2 to read:

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

5           ...

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

10           **SECTION 6.(c)** G.S. 105-134.1 is amended by adding a new subdivision to  
11 read:

12           "**§ 105-134.1. Definitions.**

13           The following definitions apply in this Part:

14           ...

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

16           **SECTION 6.(d)** G.S. 105-134.6(c) is amended by adding a new subdivision  
17 to read:

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

21           ...

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

26           **SECTION 6.(e)** This section is effective for taxable years beginning on or  
27 after January 1, 2007.

## 28

## 29 **PART VII. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL**

## 30 **IMMIGRANTS**

31

32           **SECTION 7.(a)** G.S. 105-163.1 reads as rewritten:

33           "**§ 105-163.1. Definitions.**

34           The following definitions apply in this Article:

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

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

39           a. A nonresident individual who performs in this State for  
40           compensation other than wages any personal services in  
41           connection with a performance, an entertainment, an athletic  
42           event, a speech, or the creation of a film, radio, or television  
43           program.



- 1                    communicable diseases whether or not the symptoms are caused by a  
2                    communicable disease; or
- 3                    (5)   Programs, services, or assistance such as soup kitchens, crisis  
4                    counseling and intervention, and short-term shelter specified by the  
5                    United States Attorney General, in the United States Attorney  
6                    General's sole and unreviewable discretion after consultation with  
7                    appropriate federal agencies and departments, which:
- 8                    a.     Deliver in-kind services at the community level, including  
9                    through public or private nonprofit agencies;
- 10                    b.     Do not condition the provision of assistance, the amount of  
11                    assistance provided, or the cost of assistance provided on the  
12                    individual recipient's income or resources; and
- 13                    c.     Are necessary for the protection of life or safety; or
- 14                    (6)   Prenatal care.
- 15                    (e)   Verification of lawful presence in the United States by a State agency or  
16                    political subdivision required to make verification shall be as follows:
- 17                    (1)   The applicant for public benefit must execute an affidavit that the  
18                    applicant is a United States citizen or legal permanent resident of the  
19                    United States and is 18 years of age or older; or
- 20                    (2)   The applicant must execute an affidavit that the applicant is a qualified  
21                    alien or nonimmigrant under the federal Immigration and Nationality  
22                    Act and is 18 years of age or older and lawfully present in the United  
23                    States.
- 24                    (f)   For any applicant who has executed an affidavit that the applicant is an alien  
25                    lawfully present in the United States, the State agency or political subdivision shall  
26                    verify eligibility for benefits through the SAVE program operated by the United States  
27                    Department of Homeland Security or a successor program designated by the United  
28                    States Department of Homeland Security. Until eligibility verification is made, the  
29                    affidavit may be presumed to be proof of lawful presence for the purposes of this  
30                    section.
- 31                    (g)   Any person who knowingly and willfully makes a false, fictitious, or  
32                    fraudulent statement of representation in an affidavit executed under subsection (e) of  
33                    this section shall, upon conviction thereof, be punished as a Class I felon.
- 34                    (h)   Agencies or political subdivisions of this State may adopt rules providing for  
35                    waiver from this section to improve efficiency or reduce delay in the verification  
36                    process or to provide for adjudication of unique individual circumstances where the  
37                    verification procedures under this section would impose unusual hardship on a legal  
38                    resident of this State.
- 39                    (i)   It shall be unlawful for any agency or political subdivision of this State to  
40                    provide any State, local, or federal benefit in violation of this section. Each State or  
41                    local agency or political subdivision that administers any program of State or local  
42                    public benefits shall provide an annual report to the General Assembly and the  
43                    Governor with respect to the agency's or political subdivision's compliance with this  
44                    section. The report shall be submitted not later than March 1 of each year.

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

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

9               **SECTION 8.(b)** This section becomes effective January 1, 2008, and applies  
10 to applications made and acts committed on and after that date.

11  
12 **PART IX. SEVERABILITY CLAUSE**

13  
14               **SECTION 9.** If any provision of this act or its application is held invalid, the  
15 invalidity does not affect other provisions or applications of this act that can be given  
16 effect without the invalid provisions or application, and to this end the provisions of this  
17 act are severable.

18  
19 **PART X. EFFECTIVE DATE**

20               **SECTION 10.** This act becomes effective January 1, 2008.  
21