

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55273-MD-34A (3/6)

Short Title: Security and Immigration Compliance. (Public)

Sponsors: Senators Allran, and Pittenger.

Referred to:

A BILL TO BE ENTITLED

AN ACT 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 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 Security and Immigration Compliance 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 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, institution of the
9 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. Public employer verification of work authorization.**

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

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

18 (b2) No contractor or subcontractor who enters a contract with a public employer
19 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 **"§ 95-282. Rule-making authority of Departments of Labor and Transportation.**

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

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

32 **"§ 95-283. Nondiscrimination in enforcement.**

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

35
36 **PART III. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION**
37 **LAWS**

38
39 **SECTION 3.** Article 20 of Chapter 15A of the General Statutes is amended
40 by adding a new section to read:

41 **"§ 15A-407. Enforcement of federal immigration laws.**

42 (a) The Secretary of Crime Control and Public Safety shall negotiate the terms of
43 a memorandum of understanding between the State of North Carolina and the United
44 States Department of Justice or Department of Homeland Security concerning the

1 enforcement of federal immigration and customs laws, detention and removals, and
2 investigations in the State of North Carolina.

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

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

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

16
17 **PART IV. DETERMINATION OF NATIONALITY AND IMMIGRATION**
18 **STATUS OF PERSONS JAILED UPON FELONY OR IMPAIRED DRIVING**
19 **CHARGES**

20
21 **SECTION 4.** Chapter 162 of the General Statutes is amended by adding a
22 new section to read:

23 **"§ 162-62. Legal status of prisoners.**

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

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

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

1 (d) The Department of Crime Control and Public Safety, after consultation with
2 the North Carolina Sheriffs' Association, shall prepare and issue guidelines and
3 procedures to be used to comply with the provisions of this section."
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5 PART V. ESTABLISH IMMIGRATION ASSISTANCE REGISTRATION ACT

6
7 SECTION 5. The General Statutes are amended by adding a new Chapter to
8 read:

9 "Chapter 84B.

10 "Immigration Assistance Registration Act.

11 "§ 84B-1. Short title.

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

13 "§ 84B-2. Purpose.

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

16 "§ 84B-3. Definitions.

17 The following definitions apply in this Chapter:

- 18 (1) Compensation. – A fee, property, services, promise of payment, or
19 anything else of value.
- 20 (2) Employed by. – When a person is on the payroll of an employer and
21 the employer deducts social security and withholding taxes from the
22 employee's paycheck or when a person receives compensation from
23 the employer on a commission basis or as an independent contractor.
- 24 (3) Immigration assistance services. – Any information or action provided
25 or offered to customers or prospective customers related to
26 immigration matters. Immigration assistance services shall not include
27 legal advice recommending a specific course of legal action or
28 providing any other assistance that requires legal analysis, legal
29 judgment, or interpretation of the law.
- 30 (4) Immigration matter. – Any proceeding, filing, or action affecting the
31 nonimmigrant, immigrant, or citizenship status of any person arising
32 under either of the following:
 - 33 a. Immigration and naturalization law, an executive order, or
34 presidential proclamation of the United States or any foreign
35 country.
 - 36 b. Action of the United States Department of Labor, the United
37 States Department of State, the United States Department of
38 Homeland Security, or the United States Department of Justice.

39 "§ 84B-4. Registration required.

40 (a) Any person who provides or offers to provide immigration assistance services
41 in this State shall register with the Secretary of State. The Secretary of State shall keep a
42 registry of all persons providing or offering to provide immigration assistance services,
43 showing for each the date of registration, the registrant's name, the address of the
44 registrant's principal place of business, and the name of the registrant's business or

1 employer, if applicable. The Secretary of State shall maintain the registry, and the
2 registry shall be open to public inspection.

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

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

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

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

14 **"§ 84B-5. Exemptions.**

15 The following persons are exempt from this Chapter:

- 16 (1) An attorney licensed to practice law in this State or an attorney
17 licensed to practice law in any other state or territory of the United
18 States or in any foreign country when acting with the approval of a
19 judge having lawful jurisdiction over an immigration matter.
- 20 (2) A legal intern, clerk, paralegal, or person in a similar position
21 employed by and under the direct supervision of a licensed attorney
22 meeting the requirements in subdivision (1) of this section and
23 providing immigration assistance services.
- 24 (3) A nonprofit organization recognized by the Board of Immigration
25 Appeals under 8 C.F.R. § 292.2(a) and employees of those
26 organizations accredited under 8 C.F.R. § 292.2(d).
- 27 (4) Any organization employing or desiring to employ an alien or
28 nonimmigrant alien, where the organization, its employees, or its
29 agents provide advice or assistance in immigration matters to alien or
30 nonimmigrant alien employees or potential employees without
31 compensation from the individuals to whom the advice or assistance is
32 provided.

33 **"§ 84B-6. Immigration assistance services permitted.**

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

- 36 (1) Complete a government agency form requested by the customer if the
37 completion of that form does not involve the use of legal judgment.
- 38 (2) Transcribe responses on a government agency form related to an
39 immigration matter without advising a customer as to his or her
40 answers on the form.
- 41 (3) Translate information on forms for a customer and translate the
42 customer's answers to questions posed on the forms.

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

16 **"§ 84B-7. Posting signs; advertisements.**

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

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

37 **"§ 84B-8. Prohibited conduct.**

38 A person providing immigration assistance services who is not exempt under this
39 Chapter shall not:

- 40 (1) Accept payment in exchange for providing legal advice or any other
41 assistance that requires legal analysis, legal judgment, or interpretation
42 of the law.
- 43 (2) Refuse to return documents supplied by, prepared on behalf of, or paid
44 for by, the customer upon the request of the customer. These

documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer.

(3) Represent, advertise, or use any titles or credentials, including 'notary public' or 'immigration consultant', while providing assistance in immigration matters that creates the belief that the person possesses special professional skills or is authorized to provide advice on an immigration matter. However, a certified notary public may use the term 'notary public' if the use is accompanied by the statement that the person is not an attorney. The term 'notary public' shall not be translated to another language.

(4) In any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles, including 'notary public', 'notary', 'licensed', 'attorney', 'lawyer', or any other term that implies the person is an attorney.

(5) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(6) Make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

(7) Violate any provision of this Chapter.

§ 84B-9. Violations; penalties.

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

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

PART VI. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO ILLEGAL IMMIGRANTS

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

"§ 105-130.2. Definitions.

The following definitions apply in this Part:

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

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

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

...

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

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

7 **"§ 105-134.1. Definitions.**

8 The following definitions apply in this Part:

9 ...

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

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

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

16 ...

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

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

23 **PART VII. WITHHOLDING ON COMPENSATION PAID TO ILLEGAL** 24 **IMMIGRANTS**

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

26 **"§ 105-163.1. Definitions.**

27 The following definitions apply in this Article:

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

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

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

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

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

1 ...
2 (12a) Unauthorized alien. – Defined in G.S. 105-130.2.
3"

4 **SECTION 7.(b)** This section becomes effective January 1, 2007, and applies
5 to payment made on or after that date.

6
7 **PART VIII. VERIFICATION OF LAWFUL PRESENCE TO RECEIVE PUBLIC**
8 **BENEFITS**

9
10 **SECTION 8.(a)** The General Statutes are amended to add a new Chapter to
11 read:

12 **"Chapter 135A.**
13 **"Public Benefits.**

14 **"§ 135A-1. Verification of lawful presence required to receive public benefits;**
15 **definitions; exceptions.**

16 (a) As used in this section,

17 (1) 'Emergency medical condition'. – As defined in 42 U.S.C.A. §
18 1396b(v)(3).

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

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

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

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

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

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

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

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

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

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

41 (5) Programs, services, or assistance such as soup kitchens, crisis
42 counseling and intervention, and short-term shelter specified by the
43 United States Attorney General, in the United States Attorney

1 General's sole and unreviewable discretion after consultation with
2 appropriate federal agencies and departments, which:

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

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

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

9 (6) Prenatal care; or

10 (7) Postsecondary education, whereby the Board of Governors of The
11 University of North Carolina or the State Board of Community
12 Colleges shall set forth, or cause to be set forth, policies regarding
13 postsecondary benefits that comply with all federal law, including
14 federal public benefits and State and local public benefits.

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 by a fine of not more than one
34 thousand dollars (\$1,000) or by imprisonment for one to five years, or both.

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

40 (i) It shall be unlawful for any agency or political subdivision of this State to
41 provide any State, local, or federal benefit in violation of this section. Each State or
42 local agency or political subdivision that administers any program of State or local
43 public benefits shall provide an annual report to the General Assembly and the

1 Governor with respect to the agency's or political subdivision's compliance with this
2 section. The report shall be submitted not later than March 1 of each year.

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

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

11 **SECTION 8.(b)** This section becomes effective January 1, 2007, and applies
12 to applications made and acts committed on and after that date.

13
14 **PART IX. SEVERABILITY CLAUSE**

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

20
21 **PART X. EFFECTIVE DATE**

22
23 **SECTION 10.** This act becomes effective January 1, 2008.