

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS75465-MD-71B (08/15)

Short Title: NC Citizen Protection Act. (Public)

Sponsors: Senator Pittenger.

Referred to:

A BILL TO BE ENTITLED

AN ACT CREATING THE NORTH CAROLINA CITIZEN PROTECTION ACT.

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 Citizen Protection 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. CREATING THE CRIME OF UNLAWFUL TRANSPORTATION OF AN ILLEGAL ALIEN AND THE CRIME OF UNLAWFUL CONCEALMENT OF AN ILLEGAL ALIEN**

**SECTION 2.(a)** Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 62.

"Illegal Aliens.

**§ 14-462. Unlawful transportation of an alien; penalty.**

(a) It shall be unlawful for any person to knowingly transport or attempt to transport within this State any illegal alien that the person knows has entered or remained in the United States in violation of law for the purpose of avoiding discovery of the alien by persons or agencies authorized to enforce immigration laws. This section shall not apply to conduct permitted by federal law.

(b) Any person who violates this section shall be guilty of unlawful transportation of an illegal alien, which offense shall be punishable as a Class G felony.

1 **"§ 14-463. Unlawful concealment of an alien; penalty.**

2 (a) It shall be unlawful for any person to knowingly conceal or shelter from  
3 detection in any place, including any building or means of transportation, any illegal  
4 alien that the person knows has entered or remained in the United States in violation of  
5 law for the purpose of avoiding discovery of the alien by persons or agencies authorized  
6 to enforce immigration laws. This section shall not apply to conduct permitted by  
7 federal law.

8 (b) Any person who violates this section shall be guilty of unlawful  
9 transportation of an illegal alien, which offense shall be punishable as a Class G  
10 felony."

11  
12 **PART III. REQUIRING COUNTIES AND CITIES TO REGISTER AND**  
13 **PARTICIPATE IN THE FEDERAL WORK AUTHORIZATION PROGRAM**  
14 **TO VERIFY INFORMATION ON ALL NEW EMPLOYEES; RESTRICTING**  
15 **ELIGIBILITY FOR AWARD OF PUBLIC CONTRACTS TO**  
16 **CONTRACTORS THAT USE THE FEDERAL WORK AUTHORIZATION**  
17 **PROGRAM**

18  
19 **SECTION 3.(a)** Article 5 of Chapter 153A of the General Statutes is  
20 amended by adding a new section to read:

21 **"§ 153A-99.1. County verification of employee work authorization.**

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

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

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

33 **SECTION 3.(b)** Article 7 of Chapter 160A of the General Statutes is  
34 amended by adding a new section to read:

35 **"§ 160A-169.1. City verification of employee work authorization.**

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

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

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

3 **SECTION 3.(c)** Article 2 of Chapter 153A of the General Statutes is  
4 amended by adding a new section to read:

5 **"§ 153A-15.2. Contractors must use federal work authorization program.**

6 (a) No county may enter into a contract for the physical performance of services  
7 within this State unless the contractor registers and participates, or attempts to register  
8 and participate, in the federal work authorization program to verify information of all  
9 new employees.

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

16 **SECTION 3.(d)** Article 2 of Chapter 160A of the General Statutes is  
17 amended by adding a new section to read:

18 **"§ 160A-12.1. Contractors must use federal work authorization program.**

19 (a) No city may enter into a contract for the physical performance of services  
20 within this State unless the contractor registers and participates, or attempts to register  
21 and participate, in the federal work authorization program to verify information of all  
22 new employees.

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

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

31 "(i) No contract may be awarded by any board or governing body of the State,  
32 institution of the State government, or any political subdivision of the State, unless the  
33 contractor registers and participates, or attempts to register and participate, in the  
34 federal work authorization program to verify information of all new employees. As used  
35 in this subsection, the term 'federal work authorization program' means any of the  
36 electronic verification of work authorization programs operated by the United States  
37 Department of Homeland Security or any equivalent federal work authorization  
38 program operated by the United States Department of Homeland Security to verify  
39 information of newly hired employees, pursuant to the Immigration Reform and Control  
40 Act of 1986 (IRCA), Public Law 99-603."

41 **SECTION 3.(f)** There is created in the Office of the Governor the "E-Verify  
42 Participation Assistance Fund." Monies in this fund shall be used to assist counties and  
43 cities with training and other costs associated with implementing G.S. 153A-99.1 and

1 G.S. 160A-169.1. The Director of the Budget shall, in his discretion, allocate monies in  
2 the Fund to cities and counties of this State.

3 **SECTION 3.(g)** There is appropriated from the General Fund to the  
4 E-Verify Participation Assistance Fund the sum of three hundred twenty-four thousand  
5 dollars (\$324,000) for the 2008-2009 fiscal year to implement Sections 3(a) and 3(b) of  
6 this act.

7  
8 **PART IV. VERIFICATION OF LAWFUL PRESENCE TO RECEIVE PUBLIC**  
9 **BENEFITS**

10  
11 **SECTION 4.(a)** Chapter 108A of the General Statutes is amended by adding  
12 a new Article to read:

13 "Article 7.

14 "Illegal Aliens.

15 **"§ 108A-112. Verification of lawful presence required to receive public benefits;**  
16 **definitions; exceptions.**

17 (a) The following definitions apply in this Article:

18 (1) 'Emergency medical condition.' – As defined in 42 U.S.C. §  
19 1396b(v)(3).

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

21 (3) 'SAVE.' – Systematic Alien Verification of Entitlement program of the  
22 United States Department of Homeland Security, or a successor  
23 program.

24 (4) 'State or local agency.' – Any State agency, county, city, consolidated  
25 city-county, or other local political subdivision or agency of local  
26 government that administers State or local benefits or federal benefits.

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

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

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

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

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

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

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

42 (4) Public health assistance for immunizations with respect to  
43 immunizable diseases and for testing and treatment of symptoms of

- 1                    communicable diseases whether or not the symptoms are caused by a  
2                    communicable disease;
- 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.
- 14            (6)       Prenatal care.
- 15            (e)       Verification of lawful presence in the United States by a State or local agency  
16                    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 or local agency shall verify eligibility for  
26                    benefits through the SAVE program operated by the United States Department of  
27                    Homeland Security or a successor program designated by the United States Department  
28                    of Homeland Security. Until eligibility verification is made, the affidavit may be  
29                    presumed to be proof of lawful presence for the purposes of this section.
- 30            (g)       Any person who knowingly and willfully makes a false, fictitious, or  
31                    fraudulent statement of representation in an affidavit executed under subsection (e) of  
32                    this section shall be punished as a Class H felon.
- 33            (h)       State or local agencies may adopt rules providing for waiver from this section  
34                    to improve efficiency or reduce delay in the verification process or to provide for  
35                    adjudication of unique individual circumstances where the verification procedures under  
36                    this section would impose unusual hardship on a legal resident of this State.
- 37            (i)       It shall be unlawful for any State or local agency to provide any State, local,  
38                    or federal benefit in violation of this section. Each State or local agency shall provide an  
39                    annual report to the General Assembly and the Governor with respect to the State or  
40                    local agency's compliance with this section. The report shall be submitted not later than  
41                    March 1 of each year.
- 42            (j)       All errors and significant delays by SAVE shall be reported by the affected  
43                    State or local agency to the United States Department of Homeland Security and to the

1 Secretary of State to ensure that the application of SAVE is not wrongfully denying  
2 benefits to legal residents of this State.

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

7  
8 **PART V. NO INCOME TAX DEDUCTION FOR COMPENSATION PAID TO**  
9 **ILLEGAL IMMIGRANTS; WITHHOLDING ON COMPENSATION PAID**  
10 **TO ILLEGAL IMMIGRANTS**

11  
12 **SECTION 5.(a)** G.S. 105-130.2 is amended by adding a new subdivision to  
13 read:

14 **"§ 105-130.2. Definitions.**

15 The following definitions apply in this Part:

16 ...

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

18 **SECTION 5.(b)** G.S. 105-130.5(a) is amended by adding a new subdivision  
19 to read:

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

22 ...

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

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

29 **"§ 105-134.1 Definitions.**

30 The following definitions apply in this Part:

31 ...

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

33 **SECTION 5.(d)** G.S. 105-134.6(c) is amended by adding a new subdivision  
34 to read:

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

38 ...

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

43 **SECTION 5.(e)** This section is effective for taxable years beginning on or  
44 after January 1, 2009.

1           **SECTION 5.(f)** G.S. 105-163.1 reads as rewritten:

2   "**§ 105-163.1. Definitions.**

3       The following definitions apply in this Article:

- 4           (1)   Compensation. – Consideration a payer pays a nonresident ~~individual~~  
5                or individual, a nonresident entity entity, or an unauthorized alien for  
6                personal services performed in this State.
- 7           (2)   Contractor. – ~~Either~~ Any of the following:
- 8                a.    A nonresident individual who performs in this State for  
9                compensation other than wages any personal services in  
10              connection with a performance, an entertainment, an athletic  
11              event, a speech, or the creation of a film, radio, or television  
12              program.
- 13              b.    A nonresident entity that provides for the performance in this  
14              State for compensation of any personal services in connection  
15              with a performance, an entertainment, an athletic event, a  
16              speech, or the creation of a film, radio, or television program.
- 17              c.    An unauthorized alien who performs any personal services in  
18              this State for compensation other than wages.

19        ...

20        (12a) Unauthorized alien. – Defined in 8 U.S.C. 1324a(h)(3).

21        ...."

22

23   **PART VI. FACILITATE ENFORCEMENT OF FEDERAL IMMIGRATION**  
24   **LAWS**

25

26           **SECTION 6.** Article 20 of Chapter 15A of the General Statutes is amended  
27 by adding a new section to read:

28   "**§ 15A-407. Enforcement of federal immigration laws.**

29        (a)   The Attorney General shall negotiate the terms of a memorandum of  
30        understanding between the State of North Carolina and the United States Department of  
31        Justice or Department of Homeland Security, as authorized by 8 U.S.C. § 1357(g),  
32        concerning the enforcement of federal immigration and customs laws, detention and  
33        removals, and investigations in the State of North Carolina.

34        (b)   The memorandum of understanding negotiated pursuant to subsection (a) of  
35        this section shall be signed on behalf of the State by the Attorney General and the  
36        Governor or as otherwise required by the appropriate federal agency.

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

42        (d)   A law enforcement officer certified as trained in accordance with the  
43        memorandum of understanding provided for in this section may enforce federal

1 immigration and customs laws while performing duties within the scope of the officer's  
2 authorized duties.

3 **"§ 15A-408. No prohibitions on cooperating with federal officials regarding**  
4 **immigration status.**

5 (a) No municipality or political subdivision of the State shall adopt any  
6 ordinance or policy that limits or prohibits a law enforcement officer, local official, or  
7 local government employee from communicating or cooperating with federal officials  
8 regarding the immigration status of any person within this State.

9 (b) Notwithstanding any other provision of law, no State agency or State official  
10 may prohibit or in any way restrict any government entity or official from sending to, or  
11 receiving from, the United States Department of Homeland Security information  
12 regarding the citizenship or immigration status of any individual.

13 (c) Notwithstanding any other provision of law, no person or agency may  
14 prohibit, or in any way restrict, a public employee from doing any of the following with  
15 respect to information regarding the immigration status, lawful or unlawful, of any  
16 individual:

17 (1) Sending this information to, or requesting or receiving such  
18 information from, the United States Department of Homeland  
19 Security.

20 (2) Maintaining such information.

21 (3) Exchanging such information with any other federal, state, or local  
22 government entity.

23 (d) Any person lawfully domiciled in this State may seek a writ of mandamus to  
24 compel any noncooperating municipality, State agency, or political subdivision to  
25 comply with this section."

26  
27 **PART VII. EXPANDING THE DEFINITION OF IDENTITY THEFT TO**  
28 **INCLUDE OBTAINING, POSSESSING, OR USING IDENTIFYING**  
29 **INFORMATION ABOUT ANOTHER PERSON WITH THE INTENT TO**  
30 **FRAUDULENTLY OBTAIN EMPLOYMENT**

31  
32 **SECTION 7.(a) G.S. 14-113.20(a) reads as rewritten:**

33 **"§ 14-113.20. Identity theft.**

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

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

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

42 (3) Avoiding legal consequences.

43 (4) Obtaining employment."

44



1 PART VIII. SETTING PENALTIES FOR VIOLATIONS OF FEDERAL  
2 IMMIGRATION LAWS RELATING TO EMPLOYMENT; MAKING  
3 EMPLOYMENT OF ILLEGAL ALIENS UNLAWFUL UNDER STATE  
4 LAW; SETTING FORTH THE PENALTIES AND ENFORCEMENT  
5 PROCEDURES; REQUIRING THAT ALL EMPLOYERS THAT REQUIRE  
6 BUSINESS OR PRIVILEGE LICENSES USE THE FEDERAL WORK  
7 AUTHORIZATION PROGRAM  
8

9 SECTION 8.(a) Chapter 64 of the General Statutes is amended by adding a  
10 new Article to read:

11 "Article 1.

12 "Various Provisions Relating to Aliens."

13 SECTION 8.(b) G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of  
14 Chapter 64 of the General Statutes, as created by this act.

15 SECTION 8.(c) Chapter 64 of the General Statutes is amended by adding a  
16 new Article to read:

17 "Article 2.

18 "Employment of Unauthorized Aliens.

19 "§ 64-10. Definitions.

20 The following definitions apply in this Article:

- 21 (1) Agency. – Any agency, department, board, or commission of this  
22 State, a county, or city that issues a license for purposes of operating a  
23 business in this State.
- 24 (2) Employee. – Any person who performs employment services for an  
25 employer pursuant to an employment relationship between the  
26 employee and employer.
- 27 (3) Employer. – Any individual or type of organization that transacts  
28 business in this State, that has a license issued by an agency in this  
29 State, and that employs one or more individuals who perform  
30 employment services in this State.
- 31 (4) Federal work authorization program. – Any of the electronic  
32 verification of work authorization programs operated by the United  
33 States Department of Homeland Security or any equivalent federal  
34 work authorization program operated by the United States Department  
35 of Homeland Security to verify information of newly hired employees,  
36 pursuant to the Immigration Reform and Control Act of 1986 (IRCA),  
37 Public Law 99-603.
- 38 (5) Intentionally. – With respect to a result or to particular conduct, acting  
39 with the objective of causing that result or engaging in that conduct.
- 40 (6) Knowingly employ an unauthorized alien. – The actions described in 8  
41 U.S.C. § 1324a. This term shall be interpreted consistently with any  
42 applicable federal rules and regulations.
- 43 (7) License. – Any agency permit, certificate, approval, registration,  
44 charter, or similar form of authorization that is required by law and

1           that is issued by any agency for the purpose of operating a business in  
2           this State. This term does not include any professional license.

3           (8) Unauthorized alien. – An alien who does not have the legal right or  
4           authorization under federal law to work in the United States as  
5           described in 8 U.S.C. § 1324a(h)(3).

6           "**§ 64-11. Loss of business licenses for violations of federal immigration law.**

7           Any agency or commission that issues a license shall, upon a showing of clear and  
8           convincing evidence, summarily revoke any license issued to any entity that has  
9           violated any federal immigration law that relates to the employment of unauthorized  
10          aliens. If any agency makes a finding to revoke a license pursuant to this section, no  
11          other agency shall be required to make a similar finding in order to revoke a license  
12          issued by it.

13          "**§ 64-12. Intentionally or knowingly employing unauthorized alien prohibited;**  
14          **penalties.**

15          (a) An employer shall not intentionally employ an unauthorized alien or  
16          knowingly employ an unauthorized alien.

17          (b) On receipt of a complaint that an employer allegedly intentionally or  
18          knowingly employs an unauthorized alien, the Attorney General or county attorney shall  
19          investigate whether the employer has violated subsection (a) of this section. When  
20          investigating a complaint, the Attorney General or county attorney shall verify the work  
21          authorization of the alleged unauthorized alien with the federal government pursuant to  
22          8 U.S.C. § 1373(c). A State, county, or local official shall not attempt to independently  
23          make a final determination on whether an alien is authorized to work in the United  
24          States. An alien's immigration status or work authorization status shall be verified with  
25          the federal government pursuant to 8 U.S.C. § 1373(c). A person who knowingly files a  
26          false and frivolous complaint under this subsection is guilty of a Class 2 misdemeanor.

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

29               (1) The Attorney General or county attorney shall notify the United States  
30               Customs and Immigration Enforcement of the unauthorized alien.

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

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

36          (d) An action for a violation of subsection (a) of this section shall be brought  
37          against the employer by the county attorney in the county where the unauthorized alien  
38          employee is employed. The county attorney shall not bring an action against any  
39          employer for any violation of subsection (a) that occurs before January 1, 2009. A  
40          second violation of this section shall be based only on an unauthorized alien who is  
41          employed by the employer after an action has been brought for a violation of subsection  
42          (a) of this section.

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

- 1           (1) For a first violation during a three-year period that is a knowing  
2 violation of subsection (a) of this section, the court:
- 3           a. Shall order the employer to terminate the employment of all  
4 unauthorized aliens.
- 5           b. Shall order the employer to be subject to a three-year  
6 probationary period. During the probationary period the  
7 employer shall file quarterly reports with the county attorney of  
8 each new employee who is hired by the employer at the specific  
9 location where the unauthorized alien performed work.
- 10          c. Shall order the employer to file a signed sworn affidavit with  
11 the county attorney within three business days after the order is  
12 issued. The affidavit shall state the employer has terminated the  
13 employment of all unauthorized aliens and that the employer  
14 will not intentionally or knowingly employ an unauthorized  
15 alien. The court shall order the appropriate agencies to suspend  
16 all licenses subject to this subdivision that are held by the  
17 employer if the employer fails to file a signed, sworn affidavit  
18 with the county attorney within three business days after the  
19 order is issued. All licenses that are suspended under this  
20 subdivision shall remain suspended until the employer files a  
21 signed, sworn affidavit with the county attorney.  
22 Notwithstanding any other provision of law, on filing of the  
23 affidavit, the suspended licenses shall be reinstated immediately  
24 by the appropriate agencies for the purposes of this subdivision.  
25 The licenses that are subject to suspension under this  
26 subdivision are all licenses that are held by the employer and  
27 that are necessary to operate the employer's business at the  
28 employer's business location where the unauthorized alien  
29 performed work. If a license is not necessary to operate the  
30 employer's business at the specific location where the  
31 unauthorized alien performed work, but a license is necessary to  
32 operate the employer's business in general, the licenses that are  
33 subject to suspension under this subdivision are all licenses that  
34 are held by the employer at the employer's primary place of  
35 business. On receipt of the court's order and notwithstanding  
36 any other provision of law, the appropriate agencies shall  
37 suspend the licenses according to the court's order. The court  
38 shall send a copy of the court's order to the Attorney General,  
39 and the Attorney General shall maintain the copy pursuant to  
40 subsection (f) of this section.
- 41          d. May order the appropriate agencies to suspend all licenses  
42 described in sub-subdivision c. of this subdivision that are held  
43 by the employer for a period not to exceed 10 business days.  
44 The court shall base its decision to suspend under this

1                    sub-subdivision on any evidence or information submitted to it  
2                    during the action for violation of this section and shall consider  
3                    the following factors, if relevant:

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

14                   (2)     For a first violation during a five-year period that is an intentional  
15                   violation of subsection (a) of this section, the court shall do all of the  
16                   following:

- 17                   a.     Order the employer to terminate the employment of all  
18                   unauthorized aliens.
- 19                   b.     Order the employer to be subject to a five-year probationary  
20                   period. During the probationary period the employer shall file  
21                   quarterly reports with the county attorney of each new  
22                   employee who is hired by the employer at the specific location  
23                   where the unauthorized alien performed work.
- 24                   c.     Order the appropriate agencies to suspend all licenses,  
25                   described in sub-subdivision d. of this subdivision that are held  
26                   by the employer for a minimum of 10 days. The court shall base  
27                   its decision on the length of the suspension under this  
28                   sub-subdivision on any evidence or information submitted to it  
29                   during the action for a violation of this subsection and shall  
30                   consider the following factors, if relevant:
  - 31                   1.     The number of unauthorized aliens employed by the  
32                   employer.
  - 33                   2.     Any prior misconduct by the employer.
  - 34                   3.     The degree of harm resulting from the violation.
  - 35                   4.     Whether the employer made good faith efforts to comply  
36                   with any applicable requirements.
  - 37                   5.     The duration of the violation.
  - 38                   6.     The role of the directors, officers, or principals of the  
39                   employer in the violation.
  - 40                   7.     Any other factors the court deems appropriate.
- 41                   d.     Order the employer to file a signed, sworn affidavit with the  
42                   county attorney. The affidavit shall state that the employer has  
43                   terminated the employment of all unauthorized aliens and that  
44                   the employer will not intentionally or knowingly employ an

1            unauthorized alien. All licenses that are suspended under this  
2            subdivision shall remain suspended until the employer files a  
3            signed, sworn affidavit with the county attorney. For the  
4            purposes of this sub-subdivision, the licenses that are subject to  
5            suspension under this sub-subdivision are all licenses that are  
6            held by the employer and that are necessary to operate the  
7            employer's business at the employer's business location where  
8            the unauthorized alien performed work. If a license is not  
9            necessary to operate the employer's business at the specific  
10           location where the unauthorized alien performed work, but a  
11           license is necessary to operate the employer's business in  
12           general, the licenses that are subject to suspension under this  
13           sub-subdivision are all licenses that are held by the employer at  
14           the employer's primary place of business. On receipt of the  
15           court's order and notwithstanding any other law, the appropriate  
16           agencies shall suspend the licenses according to the court's  
17           order. The court shall send a copy of the court's order to the  
18           Attorney General, and the Attorney General shall maintain the  
19           copy pursuant to subsection (f) of this section.

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

33           (f)    The Attorney General shall maintain copies of court orders that are received  
34           pursuant to subsection (e) of this section and shall maintain a database of the employers  
35           who have a first violation of subsection (a) of this section and make the court orders  
36           available on the Attorney General's Web site.

37           (g)    On determining whether an employee is an unauthorized alien, the court shall  
38           consider only the federal government's determination pursuant to 8 U.S.C. § 1373(c).  
39           The federal government's determination creates a rebuttable presumption concerning the  
40           employee's legal status. The court may take judicial notice of the federal government's  
41           determination and may request the federal government to provide automated or  
42           testimonial verification pursuant to 8 U.S.C. § 1373(c).

43           (h)    For the purposes of this section, proof of verifying the employment  
44           authorization of an employee through the federal work authorization program creates a

1 rebuttable presumption that an employer did not intentionally or knowingly employ an  
2 unauthorized alien.

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

7 **"§ 64-13. Article does not require action that is contrary to federal or State law.**

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

10 **"§ 64-14. Employers must use federal work authorization program.**

11 After December 31, 2008, every employer, after hiring an employee, shall verify the  
12 employment eligibility of the employee through the federal work authorization program.

13 **"§ 64-15. Discharge of authorized employee while employer simultaneously**  
14 **employs an unauthorized alien is an unfair trade practice.**

15 The discharge of any United States citizen or permanent resident alien employee by  
16 an employer of this State, who, on the date of the discharge, employed an unauthorized  
17 alien, shall be an unfair trade practice as defined in G.S. 75-1.1, and the discharged  
18 employee shall have a right of action under G.S. 75-16."

19  
20 **PART IX. ESTABLISHING IMMIGRATION ASSISTANCE REGISTRATION**  
21 **ACT**

22  
23 **SECTION 9.** The General Statutes are amended by adding a new Chapter to  
24 read:

25 **"Chapter 84B.**

26 **"Immigration Assistance Registration Act.**

27 **"§ 84B-1. Short title.**

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

29 **"§ 84B-2. Purpose.**

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

32 **"§ 84B-3. Definitions.**

33 The following definitions apply in this Chapter:

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

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

40 (3) Immigration assistance services. – Any information or action provided  
41 or offered to customers or prospective customers related to  
42 immigration matters. Immigration assistance services shall not include  
43 legal advice recommending a specific course of legal action or

1 providing any other assistance that requires legal analysis, legal  
2 judgment, or interpretation of the law.

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

6 a. Immigration and naturalization law, an executive order, or  
7 presidential proclamation of the United States or any foreign  
8 country.

9 b. Action of the United States Department of Labor, the United  
10 States Department of State, the United States Department of  
11 Homeland Security, or the United States Department of Justice.

12 **"§ 84B-4. Registration required.**

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

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

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

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

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

31 **"§ 84B-5. Exemptions.**

32 The following persons are exempt from this Chapter:

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

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

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

- 1           (4) Any organization employing or desiring to employ an alien or  
2           nonimmigrant alien, where the organization, its employees, or its  
3           agents provide advice or assistance in immigration matters to alien or  
4           nonimmigrant alien employees or potential employees without  
5           compensation from the individuals to whom the advice or assistance is  
6           provided.

7 **"§ 84B-6. Immigration assistance services permitted.**

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

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

32 **"§ 84B-7. Posting signs; advertisements.**

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

42           (b) Every person providing immigration assistance services who is not an  
43           attorney and advertises immigration assistance services in a language other than  
44           English, whether by radio, television, signs, pamphlets, newspapers, or other written



1 communication, with the exception of a single desk plaque, shall include in the  
2 document, advertisement, stationery, letterhead, business card, or other comparable  
3 written material the following notice in English and the language in which the written  
4 communication appears: 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE  
5 LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL  
6 ADVICE.' If the notice is in writing, the notice must appear in a conspicuous manner,  
7 and if the advertisement is by radio or television, the statement may be modified but  
8 must include substantially the same message.

9 **"§ 84B-8. Prohibited conduct.**

10 A person providing immigration assistance services who is not exempt under this  
11 Chapter shall not:

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

38 **"§ 84B-9. Violations; penalties.**

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

42 (b) Violations of this Chapter may result in a fine of up to one thousand dollars  
43 (\$1,000) for each violation. A fine charged pursuant to this Chapter shall not preempt or  
44 preclude additional appropriate civil or criminal penalties."

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**PART X. SEVERABILITY CLAUSE**

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

**PART XI. EFFECTIVE DATES**

**SECTION 10.** Sections 4 and 5 of this act become effective January 1, 2009. Sections 2 and 7 of this act become effective December 1, 2008. All remaining sections of this act become effective October 1, 2008.