

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH50112-MD-17 (01/05)

Short Title: Support Law Enforcement/Safe Neighborhoods. (Public)

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

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SUPPORT OUR LAW ENFORCEMENT AND SAFE
3 NEIGHBORHOODS ACT.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. SHORT TITLE**

7
8 **SECTION 1.** This act shall be known and may be cited as "The Support Our Law
9 Enforcement and Safe Neighborhoods Act."

10
11 **PART II. ENFORCEMENT OF IMMIGRATION LAWS**

12
13 **SECTION 2.(a)** Chapter 64 of the General Statutes is amended by adding a new
14 Article to read:

15 "Article 1.

16 Various Provisions Related to Aliens."

17 **SECTION 2.(b)** G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of
18 Chapter 64 of the General Statutes, as created by this section.

19 **SECTION 2.(c)** Chapter 64 of the General Statutes is amended by adding a new
20 Article to read:

21 "Article 2.

22 "Enforcement of Federal Immigration Laws.

23 **"§ 64-10. Policies limiting enforcement of federal immigration laws prohibited; suits to**
24 **enforce authorized.**

25 (a) Policies Restricting Enforcement of Federal Law Prohibited. – No official or agency
26 of this State, a county, a city, or any other political subdivision of this State shall limit or
27 restrict the enforcement of federal immigration laws, including 8 U.S.C. §§ 1373 and 1644, to
28 less than the full extent permitted by federal law.

29 (b) Civil Action. – Any resident of this State may bring a civil action to enforce the
30 prohibition contained in subsection (a) of this section against any governmental entity that
31 adopts or implements a policy that violates that prohibition. The action shall be commenced in
32 superior court in the county where the alleged violation is occurring. The court shall order
33 recovery of court costs and reasonable attorneys' fees to a party that prevails on the merits and,
34 if there is a judicial finding that an entity has violated subsection (a) of this section, shall also
35 order the entity to pay a civil fine of not less than five hundred dollars (\$500.00) and not more



1 than five thousand dollars (\$5,000) for each day that the policy has remained in effect after the
2 filing of an action pursuant to this subsection. The clear proceeds of these fines shall be
3 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

4 (c) Indemnification of Law Enforcement Officers. – A law enforcement officer shall be
5 indemnified by the law enforcement officer's agency against reasonable costs and expenses,
6 including attorneys' fees, incurred by the officer in connection with any action brought pursuant
7 to this section to which the officer may be a party by reason of the officer being or having been
8 a member of the law enforcement agency, except in relation to matters in which the officer is
9 adjudged to have acted in bad faith.

10 **"§ 64-11. Determination of immigration status of persons lawfully stopped or detained.**

11 (a) Verification of Status Required. – For any lawful stop or detention made by a law
12 enforcement officer or law enforcement agency as part of the enforcement of any other law or
13 ordinance, where reasonable suspicion exists that the person stopped or detained is an alien
14 who is not lawfully present in the United States, the officer or agency shall make a reasonable
15 attempt, when practicable, to determine the immigration status of the person, except if making
16 such a determination might hinder or obstruct an investigation.

17 (b) Presumption Against Being an Unlawfully Present Alien. – A person is presumed
18 not to be an alien who is unlawfully present in the United States if the person provides to the
19 law enforcement officer or agency any of the following:

- 20 (1) A valid North Carolina drivers license.
- 21 (2) A North Carolina special identification card.
- 22 (3) A valid tribal enrollment card or other form of tribal identification.
- 23 (4) If the entity requires proof of legal presence in the United States before
24 issuance, any valid federal, State, or local government issued identification.

25 **"§ 64-12. Determination of immigration status of persons arrested.**

26 Any person who is arrested shall have the person's immigration status determined before
27 the person is released.

28 **"§ 64-13. Notification of federal government when unlawfully present aliens are released**
29 **from imprisonment or pay fines; transfer to federal custody.**

30 (a) Notification. – If an alien who is not lawfully present in the United States is
31 convicted of a violation of State or local law, upon release from imprisonment or collection of
32 any fine that is imposed, United States Immigration and Customs Enforcement shall be
33 immediately notified.

34 (b) Transportation of Aliens. – Notwithstanding any other provision of law, a law
35 enforcement agency may securely transport an alien who the agency has received verification is
36 unlawfully present in the United States and who is in the agency's custody to a federal facility
37 in this State or to any other point of transfer into federal custody that is outside the jurisdiction
38 of the law enforcement agency.

39 **"§ 64-14. Sanctuary policies prohibited.**

40 Except as required by federal law, State agencies and units of local government, as well as
41 officials and employees of these entities, shall not be prohibited or in any way restricted from
42 sending, receiving, or maintaining information relating to the immigration status of any
43 individual or exchanging that information with any other federal, state, or local governmental
44 entity for the following official purposes:

- 45 (1) Determining eligibility for a public benefit, service, or license provided by
46 any federal agency, State agency, or local government.
- 47 (2) Verifying any claim of residence or domicile if determination of residence or
48 domicile is required under the laws of this State or a judicial order issued
49 pursuant to a civil or criminal proceeding in this State.
- 50 (3) If the person is an alien, determining whether the person is in compliance
51 with the federal registration laws prescribed by Title II, Chapter 7 of the

1 Federal Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., as
2 amended.

3 (4) Pursuant to 8 U.S.C. §§ 1373 and 1644.

4 **"§ 64-15. Willful failure to complete or carry an alien registration document.**

5 (a) Offense. – In addition to any violation of federal law, a person commits the offense
6 of willful failure to complete or carry an alien registration document if the person is in violation
7 of 8 U.S.C. §§ 1304(e) or 1306(a).

8 (b) Classification. – Willful failure to complete or carry an alien registration document
9 is a Class 1 misdemeanor except that the maximum fine is one hundred dollars (\$100.00) and
10 the maximum imprisonment is 20 days for a first offense and 30 days for subsequent offenses.

11 (c) Cost of Confinement. – In addition to any other penalty prescribed by law, the court
12 shall order a person convicted of the offense described in subsection (a) of this section to pay
13 the costs of the offender's confinement.

14 (d) Exception. – This section does not apply to a person who maintains authorization
15 from the federal government to remain in the United States.

16 **"§ 64-16. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not**
17 **lawfully present in the United States.**

18 (a) Offense. – It is unlawful for a person who is in violation of a criminal statute or
19 otherwise committing a criminal offense to do any of the following:

20 (1) Transport or move or attempt to transport or move an alien in this State, in
21 furtherance of the illegal presence of the alien in the United States, in a
22 means of transportation if the person knows or recklessly disregards the fact
23 that the alien has come to, has entered, or remains in the United States in
24 violation of law.

25 (2) Conceal, harbor, or shield or attempt to conceal, harbor, or shield an alien
26 from detection in any place in this State, including any building or any
27 means of transportation, if the person knows or recklessly disregards the fact
28 that the alien has come to, has entered, or remains in the United States in
29 violation of law.

30 (3) Encourage or induce an alien to come to or reside in this State if the person
31 knows or recklessly disregards the fact that such coming to, entering, or
32 residing in this State is or will be in violation of law.

33 (b) Classification. – A person who violates this section is guilty of a Class 1
34 misdemeanor except that a violation of this section that involves 10 or more aliens who are not
35 lawfully present in the United States is a Class G felony.

36 (c) Exception. – This section does not apply to child protective services workers or
37 child welfare services workers, or to emergency medical services personnel, or personnel
38 providing ambulance or rescue squad services, while acting in their official capacity.

39 **"§ 64-17. Permissible methods for verifying immigration status under this Article.**

40 Verification of a person's immigration status pursuant to this Article shall be made
41 consistently with federal law and may be made by any of the following methods, as applicable:

42 (1) Pursuant to 8 U.S.C. §§ 1373(c), 1644, or any other provision of federal law.

43 (2) By a law enforcement officer who is authorized by the federal government to
44 verify or ascertain an alien's immigration status.

45 (3) In any other manner authorized by the federal government.

46 **"§ 64-18. Article must be implemented in a manner consistent with other rights.**

47 This Article shall be implemented in a manner consistent with federal laws regulating
48 immigration, protecting the civil rights of all persons, and respecting the privileges and
49 immunities of United States citizens. Law enforcement officers and agencies shall not consider
50 race, color, or national origin in the enforcement of this Article except to the extent permitted
51 by the United States or North Carolina Constitutions."

1 **SECTION 2.(d)** G.S. 15A-401(b)(2) reads as rewritten:

- 2 "(2) Offense Out of Presence of Officer. – An officer may arrest without a
3 warrant any person who the officer has probable cause to believe:
4 a. Has committed a felony; or
5 b. Has committed a misdemeanor, and:
6 1. Will not be apprehended unless immediately arrested, or
7 2. May cause physical injury to himself or others, or damage to
8 property unless immediately arrested; or
9 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,
10 20-138.1, or 20-138.2; or
11 d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1),
12 14-33(c)(2), or 14-34 when the offense was committed by a person
13 with whom the alleged victim has a personal relationship as defined
14 in G.S. 50B-1; or
15 e. Has committed a misdemeanor under G.S. 50B-4.1(a); or
16 f. Has violated a pretrial release order entered under
17 G.S. 15A-534.1(a)(2).
18 g. Has received information from the Immigration Customs and
19 Enforcement or some other federal agency that the person has
20 committed an act that makes the person removable from the United
21 States."
22

23 **PART III. CREATE THE CRIME OF SMUGGLING OF HUMAN BEINGS**

24
25 **SECTION 3.(a)** G.S. 14-43.10(a) is amended by adding a new subdivision to read:

- 26 "(6) Smuggling of human beings. – The transportation, procurement of
27 transportation, or use of property or real property by a person or entity that
28 knows or has reason to know that the person transported or to be transported
29 is not lawfully present in the United States or has attempted to enter, entered,
30 or remained in the United States in violation of law. This term includes the
31 provision of services that facilitate transportation including travel
32 arrangement services or money transmission services and also includes the
33 provision of property that facilitates transportation, including provision of a
34 weapon, a vehicle or other means of transportation, or false identification."

35 **SECTION 3.(b)** Article 10A of Chapter 14 of the General Statutes is amended by
36 adding a new section to read:

37 "**§ 14-43.14. Smuggling of human beings.**

38 (a) A person commits the offense of smuggling of human beings when the person
39 intentionally engages in the smuggling of human beings for profit or commercial purpose.

40 (b) A person who violates this section is guilty of a Class C felony if the victim of the
41 offense is a minor and is not accompanied by a family member over eighteen years of age or if
42 the offense involved the use of a deadly weapon or dangerous instrument. Otherwise, a person
43 who violates this section is guilty of a Class F felony. For purposes of this subsection, a 'family
44 member' is a person's parent, grandparent, sibling, or any other person who is related to the
45 person by consanguinity or affinity to the second degree.

46 (c) Each violation of this section constitutes a separate offense and shall not merge with
47 any other offense."
48

49 **PART IV. REQUIRE INCREASED USE OF E-VERIFY**

50
51 **SECTION 4.(a)** G.S. 126-7.1(f) reads as rewritten:

1 "(f) Each State agency, department, institution, university, community college, and local
2 education agency shall ~~verify, in accordance with the Basic Pilot Program administered by the~~
3 ~~United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each~~
4 ~~individual's legal status or authorization to work in the United States after hiring the individual~~
5 ~~as an employee to work in the United States; register and participate in E-Verify to verify the~~
6 ~~work authorization of new employees. As used in this section, the term 'E-Verify' means the~~
7 ~~federal E-Verify program operated by the United States Department of Homeland Security and~~
8 ~~other federal agencies, or any successor or equivalent program used to verify the work~~
9 ~~authorization of newly hired employees pursuant to federal law."~~

10 **SECTION 4.(b)** Article 5 of Chapter 153A of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 153A-99.1. County verification of employee work authorization.**

13 (a) Counties Must Use E-Verify. – Each county shall register and participate in
14 E-Verify to verify the work authorization of new employees.

15 (b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal
16 E-Verify program operated by the United States Department of Homeland Security and other
17 federal agencies, or any successor or equivalent program used to verify the work authorization
18 of newly hired employees pursuant to federal law.

19 (c) Nondiscrimination. – This section shall be enforced without regard to race, religion,
20 gender, ethnicity, or national origin."

21 **SECTION 4.(c)** Article 7 of Chapter 160A of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 160A-169.1. City verification of employee work authorization.**

24 (a) Cities Must Use E-Verify. – Each city shall register and participate in E-Verify to
25 verify the work authorization of new employees.

26 (b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal
27 E-Verify program operated by the United States Department of Homeland Security and other
28 federal agencies, or any successor or equivalent program used to verify the work authorization
29 of newly hired employees pursuant to federal law.

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

32 **SECTION 4.(d)** G.S. 153A-449 reads as rewritten:

33 **"§ 153A-449. Contracts with private ~~entities~~; contractors must use federal work**
34 **authorization verification program.**

35 (a) Authority. – A county may contract with and appropriate money to any person,
36 association, or corporation, in order to carry out any public purpose that the county is
37 authorized by law to engage in.

38 (b) Contractors Must Use E-Verify. – No county may enter into a contract for the
39 physical performance of services within this State unless the contractor is in compliance with
40 G.S. 64-38."

41 **SECTION 4.(e)** G.S. 160A-20.1 reads as rewritten:

42 **"§ 160A-20.1. Contracts with private ~~entities~~; contractors must use federal work**
43 **authorization verification program.**

44 (a) Authority. – A city may contract with and appropriate money to any person,
45 association, or corporation, in order to carry out any public purpose that the city is authorized
46 by law to engage in.

47 (b) Contractors Must Use E-Verify. – No city may enter into a contract for the physical
48 performance of services within this State unless the contractor is in compliance with
49 G.S. 64-38."

50 **SECTION 4.(f)** G.S. 143-129 is amended by adding a new subsection to read:

1 "(j) No contract subject to this section may be awarded by any board or governing body
2 of the State, institution of State government, or any political subdivision of the State, unless the
3 contractor is in compliance with G.S. 64-38."

4 **SECTION 4.(g)** Article 3 of Chapter 143 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 143-48.5. Contractors must use federal work authorization verification program.**

7 An entity required to report to the Department of Administration pursuant to G.S. 143-48(b)
8 shall not enter into any contract for goods or services unless the contractor is in compliance
9 with G.S. 64-38."

10 **SECTION 4.(h)** Chapter 64 of the General Statutes is amended by adding a new
11 Article to read:

12 "Article 3.

13 "Employment of Unauthorized Aliens.

14 **"§ 64-25. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Agency. – Any agency, department, board, or commission of this State, a
17 county, or a city that issues a license for purposes of operating a business in
18 this State.
- 19 (2) Affected business location. – The business location where an unauthorized
20 alien performed work.
- 21 (3) Affected licenses. – All licenses that are held by the employer specific to the
22 affected business location. If the employer does not hold a license specific to
23 the affected business location but a license is necessary to operate the
24 employer's business in general, the term means all licenses that are held by
25 the employer at the employer's primary place of business.
- 26 (4) District attorney. – The district attorney's office for a prosecutorial district in
27 which the employee whose employment allegedly violates G.S. 64-26 is or
28 was employed.
- 29 (5) Employ. – Hire an employee after December 31, 2011.
- 30 (6) Employee. – Any person who provides services or labor for an employer in
31 this State for wages or other remuneration. This term does not include an
32 independent contractor.
- 33 (7) Employer. – Any person, business entity, or other organization that transacts
34 business in this State, that has a license issued by an agency in this State, and
35 that employs one or more employees in this State. In the case of an
36 independent contractor, the term means the independent contractor and does
37 not mean the person or organization that uses the contract labor. This term
38 does not include State agencies, counties, municipalities, or other
39 governmental bodies.
- 40 (8) E-Verify. – The federal E-Verify program operated by the United States
41 Department of Homeland Security and other federal agencies, or any
42 successor or equivalent program used to verify the work authorization of
43 newly hired employees pursuant to federal law.
- 44 (9) Independent contractor. – Any individual or entity that carries on an
45 independent business, that contracts to do a piece of work according to the
46 individual's or entity's own means and methods and that is subject to control
47 only as to results. Whether an individual or entity is an independent
48 contractor is to be determined on a case-by-case basis through various
49 factors including whether the individual or entity:
- 50 a. Supplies the tools or materials.
- 51 b. Makes services available to the general public.

- 1 c. Works or may work for a number of clients at the same time.
2 d. Has an opportunity for profit or loss as a result of labor or service
3 provided.
4 e. Invests in the facilities for work.
5 f. Directs the order or sequence in which the work is completed.
6 g. Determines the hours when the work is completed.
7 (10) Knowingly employ an unauthorized alien. – The actions described as
8 unlawful in 8 U.S.C. § 1324a. This term shall be interpreted consistently
9 with any applicable federal rules and regulations.
10 (11) License. – Any permit, certificate, approval, registration, charter, or similar
11 form of authorization, regardless of its form, issued by an agency and
12 required by law in order to operate a business in this State. This term does
13 not include any of the following:
14 a. A professional license.
15 b. A permit, certificate, approval, registration, charter, or similar form
16 of authorization, regardless of its form, issued pursuant to Chapter
17 113A or Article 21 of Chapter 143 of the General Statutes.
18 c. A water or wastewater permit issued pursuant to Articles 10 or 11 of
19 Chapter 130A of the General Statutes.
20 (12) Unauthorized alien. – As defined in 8 U.S.C. § 1324a(h)(3).

21 **"§ 64-26. Knowingly employing unauthorized alien prohibited.**

22 An employer shall not knowingly employ an unauthorized alien. If, in the case when an
23 employer uses a contract, subcontract, or some other agreement with an independent contractor
24 to obtain the labor of an alien in this State, the employer knowingly contracts with an
25 unauthorized alien or with a person who employs or contracts with an unauthorized alien to
26 perform the labor, the employer violates this section.

27 **"§ 64-27. Attorney General to prepare complaint form.**

28 (a) Preparation of Form. – The Attorney General shall prescribe a complaint form for a
29 person to allege a violation of G.S. 64-26. The form shall clearly state that completed forms
30 may be sent to either the Attorney General or the district attorney.

31 (b) Certain Information Not Required. – The complainant shall not be required to list
32 the complainant's social security number on the complaint form or to have the complaint
33 notarized.

34 **"§ 64-28. Reporting of complaints.**

35 (a) Filing of Complaint. – Any person with a good faith belief that an employer is
36 violating or has violated G.S. 64-26 may file a complaint with the Attorney General or the
37 district attorney setting forth the basis for that belief. The complaint may be on a form
38 prescribed by the Attorney General pursuant to G.S. 64-27 or may be made in any other form
39 that gives the Attorney General or district attorney information that is sufficient to proceed with
40 an investigation pursuant to G.S. 64-29.

41 (b) False Statements a Misdemeanor. – A person who knowingly files a false and
42 frivolous complaint under this section is guilty of a Class 2 misdemeanor.

43 **"§ 64-29. Investigation of complaints.**

44 (a) Complaints Received on Prescribed Form. – Upon receipt of a complaint on a form
45 prescribed pursuant to G.S. 64-27 that an employer allegedly knowingly employs an
46 unauthorized alien, the Attorney General or district attorney shall investigate whether the
47 employer has in fact violated G.S. 64-26.

48 (b) Complaints Not Received on Prescribed Form. – If a complaint is received but is not
49 submitted on a form prescribed pursuant to G.S. 64-27, the Attorney General or district
50 attorney may investigate whether the employer has violated G.S. 64-26.

1 (c) Anonymous Complaints Permitted. – Nothing in this section shall be construed to
2 prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint
3 form.

4 (d) Certain Complaints Shall Not Be Investigated. – The Attorney General or district
5 attorney shall not investigate complaints that are based solely on race, color, or national origin.

6 (e) Assistance by Law Enforcement. – The Attorney General or district attorney may
7 request that the State Bureau of Investigation assist in investigating a complaint under this
8 section.

9 (f) Subpoena for Production of Documents. – The Attorney General or district attorney
10 may issue a subpoena for production of employment records that relate to the recruitment,
11 hiring, employment, or termination policies, practices or acts of employment, as part of the
12 investigation of a valid complaint under this section.

13 **"§ 64-30. Actions to be taken; commencement of action.**

14 If, after an investigation, the Attorney General or district attorney determines that the
15 complaint is not false and frivolous:

16 (1) The Attorney General or district attorney shall notify the United States
17 Customs and Immigration Enforcement of the presence of the suspected
18 unauthorized alien.

19 (2) The Attorney General or district attorney shall notify local law enforcement
20 agencies of the presence of the suspected unauthorized alien.

21 (3) If the complaint was originally filed with the Attorney General, the Attorney
22 General shall notify the district attorney to bring an action pursuant to
23 subdivision (4) of this subsection.

24 (4) The district attorney shall bring a civil action for a violation of G.S. 64-26
25 against the employer in the superior court district in which the affected
26 business location is located.

27 **"§ 64-31. Determining whether violation is first, second, or subsequent.**

28 (a) Determination. – For purposes of G.S. 64-32 through 64-34, a violation of
29 G.S. 64-26 shall be considered:

30 (1) A first violation by an employer at a business location if the violation did not
31 occur during a probationary period ordered by the court under G.S. 64-32.

32 (2) A second violation by an employer at a business location if the violation
33 occurred during a probationary period ordered by the court under
34 G.S. 64-32.

35 (3) A subsequent violation by an employer at a business location if the employer
36 has previously been found to have committed a second violation, as that
37 term is defined in subdivision (2) of this subsection, at that business location.

38 (b) Second and Subsequent Violations. – A second violation of G.S. 64-26 shall be
39 based only on an unauthorized alien who is employed by the employer after an action has been
40 brought pursuant to G.S. 64-30(4). A subsequent violation shall be based only on an
41 unauthorized alien who is employed by the employer after the employer is found to have
42 committed a second violation.

43 **"§ 64-32. Consequences of first violation.**

44 (a) Mandatory Consequences. – For a first violation of G.S. 64-26, the court shall do all
45 of the following:

46 (1) Order the termination of employment of unauthorized aliens. – Order the
47 employer to terminate the employment of all unauthorized aliens.

48 (2) Order probationary period. – Order the employer to be subject to a
49 three-year probationary period for the affected business location. During the
50 probationary period the employer shall file quarterly reports with the district

1 attorney of each new employee who is hired by the employer at the affected
2 business location.

3 (3) Order employer to file affidavit. – Order the employer to file a signed sworn
4 affidavit with the district attorney within three business days after the order
5 issued pursuant to this subsection is issued. The affidavit shall state with
6 specificity that the employer has taken one of the following actions:

7 a. Terminated the unauthorized alien's employment.

8 b. After consultation with the employee, requested a secondary or
9 additional verification of employment authorization through
10 E-Verify.

11 c. Attempted to terminate the unauthorized alien's employment, and the
12 termination has been challenged in a court of competent jurisdiction.

13 (b) Permissive Consequences. – For a first violation of G.S. 64-26, notwithstanding
14 compliance with the requirements of subdivision (a)(3) of this section, the court may order the
15 appropriate agencies to suspend affected licenses for a period not to exceed 30 business days.
16 The court shall base the decision to suspend on evidence and information submitted to it in the
17 course of the civil action and shall consider the following factors, as appropriate:

18 (1) The number of unauthorized aliens employed by the employer.

19 (2) Any prior misconduct by the employer.

20 (3) The degree of harm resulting from the violation.

21 (4) Whether the employer made good faith efforts to comply with any
22 applicable requirements.

23 (5) The duration of the violation.

24 (6) The role of the directors, officers, or principals of the employer in the
25 violation.

26 (7) Any other factors the court deems appropriate.

27 (c) Effect of Failure to File Affidavit. – If an employer fails to timely file an affidavit
28 required by subdivision (a)(3) of this section or by G.S. 64-33(a), the court shall order the
29 appropriate agencies to suspend all affected licenses held by the employer. Licenses suspended
30 under this subsection shall remain suspended until the employer files the affidavit. Upon receipt
31 of a court order issued pursuant to this subsection, and notwithstanding any other provision of
32 law, the appropriate agencies shall suspend the affected licenses in accordance with the court's
33 order. The court shall send a copy of the court's order to the Attorney General, and the Attorney
34 General shall maintain the copy pursuant to G.S. 64-34. Notwithstanding any other provision of
35 law, upon the filing of the affidavit, the suspended licenses shall be reinstated immediately by
36 the appropriate agencies.

37 **"§ 64-33. Consequences of second and subsequent violations.**

38 (a) Second Violation. – For a second violation of G.S. 64-26, the court shall order the
39 measures required by G.S. 64-32(a)(1) and (3) and shall also order the appropriate agencies to
40 suspend affected licenses for a period of 90 business days.

41 (b) Subsequent Violations. – For a subsequent violation of G.S. 64-26, the court shall
42 order the appropriate agencies to permanently revoke all affected licenses. Upon receipt of a
43 court order issued pursuant to this section, and notwithstanding any other provision of law, the
44 appropriate agencies shall immediately revoke the licenses. The court shall send a copy of the
45 court's order to the Attorney General, and the Attorney General shall maintain the copy
46 pursuant to G.S. 64-34.

47 **"§ 64-34. Attorney General to maintain copies of orders.**

48 The Attorney General shall maintain copies of court orders that are received pursuant to
49 G.S. 64-32 and G.S. 64-33 and shall maintain a database of the employers and business
50 locations that have a first violation of G.S. 64-26 and make the court orders available on the
51 Attorney General's Web site.

1 **"§ 64-35. Work authorization shall be verified through the federal government.**

2 (a) Verification by Attorney General or District Attorney. – When investigating a
3 complaint under this Article, the Attorney General or district attorney shall verify the work
4 authorization of the alleged unauthorized alien with the federal government pursuant to 8
5 U.S.C. § 1373(c). A State, county, or local official shall not attempt to independently make a
6 final determination of whether an alien is authorized to work in the United States.

7 (b) Verification by Court. – In considering whether an employee is an unauthorized
8 alien, the court shall consider only the federal government's determination issued pursuant to 8
9 U.S.C. § 1373(c). The court may take judicial notice of the federal government's determination
10 and may request the federal government to provide automated or testimonial verification
11 pursuant to 8 U.S.C. § 1373(c).

12 **"§ 64-36. Defenses.**

13 (a) E-Verify Use. – For purposes of this Article, proof that an employee's work
14 authorization was verified through E-Verify creates a rebuttable presumption that an employer
15 did not violate G.S. 64-26.

16 (b) Compliance With Federal Law. – For purposes of this Article, an employer who
17 establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b)
18 establishes an affirmative defense to a violation of G.S. 64-26. For purposes of this subsection,
19 an employer is considered to have complied with the requirements of 8 U.S.C. § 1324a(b)
20 notwithstanding any isolated, sporadic, or accidental technical or procedural failure to meet the
21 requirements, so long as there is a good faith attempt to comply with the requirements.

22 **"§ 64-37. Article does not require action that is contrary to federal or State law.**

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

25 **"§ 64-38. Employers must use federal work authorization verification program.**

26 (a) Employers Must Use E-Verify. – Each employer shall register and participate in
27 E-Verify to verify the work authorization of new employees. Verification may be made through
28 a third party on behalf of an employer where permitted by federal law.

29 (b) Definition of Employer. – Notwithstanding the definition of 'employer' contained in
30 G.S. 64-25, for purposes of this section, the term means any person, business entity, or other
31 organization that transacts business in this State that employs one or more employees in this
32 State. In the case of an independent contractor, the term means the independent contractor and
33 does not mean the person or organization that uses the contract labor. This term does not
34 include State agencies, counties, municipalities, or other governmental bodies.

35 **"§ 64-39. Discharge of authorized employee while employer simultaneously employs an**
36 **unauthorized alien is an unfair trade practice.**

37 The discharge or termination of any employee who is not an unauthorized alien, who, on
38 the date of the discharge, employed an unauthorized alien, shall be an unfair trade practice as
39 defined in G.S. 75-1.1, and the discharged or terminated employee shall have a right of action
40 under G.S. 75-16."

41
42 **PART V. ELIGIBILITY TO RECEIVE BENEFITS**

43
44 **SECTION 5.** Chapter 64 of the General Statutes is amended by adding a new
45 Article to read:

46 "Article 4.

47 "Eligibility for Public Benefits.

48 **"§ 64-45. Definitions.**

49 The following definitions apply in this Article:

50 (1) Federal public benefit. – As defined in 8 U.S.C. § 1611.

51 (2) Political subdivision. – A county or municipality of this State.

- 1 (3) State or local public benefit. – As defined in 8 U.S.C. § 1621, except that the
2 term does not include commercial or professional licenses, benefits provided
3 by a public retirement system, or services widely available to the general
4 public population as a whole.

5 **"§ 64-46. Verification of eligibility for federal public benefits.**

6 (a) Certain Documents Must Be Presented. – Notwithstanding any other provision of
7 law and to the extent permitted by federal law, any natural person who applies for a federal
8 public benefit that is administered by this State or a political subdivision shall submit at least
9 one of the following documents to the entity that administers the federal public benefit
10 demonstrating lawful presence in the United States:

- 11 (1) A North Carolina drivers license.
12 (2) A North Carolina special identification card.
13 (3) A birth certificate or delayed birth certificate issued in any state, territory, or
14 possession of the United States.
15 (4) A United States certificate of birth abroad.
16 (5) A United States passport.
17 (6) A foreign passport with a United States visa.
18 (7) An I-94 form with a photograph.
19 (8) A United States Citizenship and Immigration Services employment
20 authorization document or refugee travel document.
21 (9) A United States certificate of naturalization or citizenship.
22 (10) A tribal certificate of Indian blood.
23 (11) A tribal or Bureau of Indian Affairs affidavit of birth.

24 (b) Alternate Documents. – To the extent permitted by federal law, an agency of this
25 State or political subdivision of this State may allow tribal members, the elderly, and persons
26 with disabilities or incapacity of the mind or body to provide documentation as specified in
27 section 6036 of the federal Deficit Reduction Act of 2005, P.L. 109-171, and related federal
28 guidance in lieu of the documentation required by this section.

29 (c) Affidavit Required. – Any natural person who applies for a federal public benefit
30 shall sign a sworn affidavit stating that any document presented pursuant to subsection (a) of
31 this section is true under penalty of perjury.

32 (d) Failure to Report Immigration Violations a Misdemeanor. – Failure to report
33 violations of federal immigration law discovered by an employee of an agency of this State or a
34 political subdivision of this State that administers a federal public benefit is a Class 2
35 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the
36 employee to make the report, the supervisor is guilty of a Class 2 misdemeanor.

37 (e) Nondiscrimination. – This section shall be enforced without regard to race, color,
38 religion, gender, ethnicity, age, disability, or national origin.

39 (f) Exception. – This section shall not apply to applications for a federal public benefit
40 for which lawful presence in the United States is not required.

41 **"§ 64-47. Verification of eligibility for State or local public benefits.**

42 (a) Certain Documents Must Be Presented. – Notwithstanding any other provision of
43 law and to the extent permitted by federal law, any State agency or political subdivision that
44 administers any State or local public benefit shall require each natural person who applies for a
45 State or local public benefit to submit to the entity that administers the State or local public
46 benefit at least one of the following documents demonstrating lawful presence in the United
47 States:

- 48 (1) A North Carolina drivers license.
49 (2) A North Carolina special identification card.
50 (3) A birth certificate or delayed birth certificate issued in any state, territory, or
51 possession of the United States.

1 (4) A United States certificate of birth abroad.

2 (5) A United States passport.

3 (6) A foreign passport with a United States visa.

4 (7) An I-94 form with a photograph.

5 (8) A United States Citizenship and Immigration Services employment
6 authorization document or refugee travel document.

7 (9) A United States certificate of naturalization or citizenship.

8 (10) A tribal certificate of Indian blood.

9 (11) A tribal or Bureau of Indian Affairs affidavit of birth.

10 (b) Alternate Documents. – To the extent permitted by federal law, an agency of this
11 State or political subdivision of this State may allow tribal members, the elderly, and persons
12 with disabilities or incapacity of the mind or body to provide documentation as specified in
13 section 6036 of the federal Deficit Reduction Act of 2005, P.L. 109-171, and related federal
14 guidance in lieu of the documentation required by this section.

15 (c) Affidavit Required. – Any natural person who applies for a State or local public
16 benefit shall sign a sworn affidavit stating that any document presented pursuant to subsection
17 (a) of this section is true under penalty of perjury.

18 (d) Failure to Report Immigration Violations a Misdemeanor. – Failure to report
19 violations of federal immigration law discovered by an employee of an agency of this State or a
20 political subdivision of this State that administers a State or local public benefit is a Class 2
21 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the
22 employee to make the report, the supervisor is guilty of a Class 2 misdemeanor.

23 (e) Nondiscrimination. – This section shall be enforced without regard to race, color,
24 religion, gender, ethnicity, age, disability, or national origin.

25 "**§ 64-48. Construction and severability.**

26 (a) Construction. – This Article shall be construed in a manner consistent with federal
27 law.

28 (b) Severability. – The provisions of this Article are severable. If any part of this Article
29 is declared invalid or unconstitutional, such declaration shall not affect the remainder. If any
30 particular interpretation or application of the provisions of this Article is declared invalid or
31 unconstitutional, such declaration shall not affect other interpretations or applications."

32
33 **PART VI. ADMISSION TO INSTITUTIONS OF HIGHER EDUCATION**

34
35 **SECTION 6.(a)** G.S. 115D-1 reads as rewritten:

36 "**§ 115D-1. Statement of purpose.**

37 The purposes of this Chapter are to provide for the establishment, organization, and
38 administration of a system of educational institutions throughout the State offering courses of
39 instruction in one or more of the general areas of two-year college parallel, technical,
40 vocational, and adult education programs, to serve as a legislative charter for such institutions,
41 and to authorize the levying of local taxes and the issuing of local bonds for the support thereof.
42 The major purpose of each and every institution operating under the provisions of this Chapter
43 shall be and shall continue to be the offering of vocational and technical education and training,
44 and of basic, high school level, academic education needed in order to profit from vocational
45 and technical education, for students who are lawfully present in the United States and are high
46 school graduates or who are beyond the compulsory age limit of the public school system and
47 who have left the public schools, provided, juveniles of any age committed to the Department
48 of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if
49 approved by the director of the youth development center to which they are assigned, take
50 courses offered by institutions of the system if they are otherwise qualified for admission.

1 The Community Colleges System Office is designated as the primary lead agency for
2 delivering workforce development training, adult literacy training, and adult education
3 programs in the State."

4 **SECTION 6.(b)** Chapter 115D of the General Statutes is amended by adding a new
5 section to read:

6 "**§ 115D-1.3. No admission for aliens not lawfully present in the United States.**

7 (a) Admission Prohibited. – A person who is not lawfully present in the United States
8 shall not be admitted to, or take any class at, a community college.

9 (b) Exceptions. – This section does not apply to any of the following:

10 (1) A person who is concurrently enrolled in secondary school during the
11 quarter, term, or semester during which the person will take a class or
12 classes at a community college.

13 (2) A person who will not be in the United States during any portion of the class
14 or classes taken at a community college."

15 **SECTION 6.(c)** Chapter 116 of the General Statutes is amended by adding a new
16 section to read:

17 "**§ 116-40.11. No admission for aliens not lawfully present in the United States.**

18 (a) Admission Prohibited. – A person who is not lawfully present in the United States
19 shall not be admitted to, or take any class at, a constituent institution of The University of
20 North Carolina.

21 (b) Exceptions. – This section does not apply to any of the following:

22 (1) A person who is concurrently enrolled in secondary school during the
23 quarter, term, or semester during which the person will take a class or
24 classes at a constituent institution.

25 (2) A person who will not be in the United States during any portion of the class
26 or classes taken at a constituent institution."

27 28 **PART VII. EFFECTIVE DATE**

29
30 **SECTION 7.** Section 4 of this act becomes effective January 1, 2012, and applies
31 to contracts entered into or renewed after that date. Section 6 of this act is effective when it
32 becomes law and applies to admissions and classes taken after that date, except that this act
33 shall not prevent a student enrolled in a program at a community college or constituent
34 institution of The University of North Carolina as of that date or during the previous term or
35 semester from completing that program. The remainder of this act becomes effective October 1,
36 2011.