

February 25, 2009

S 337. NC ILLEGAL IMMIGRATION REFORM ACT. Filed 2/25/09. *TO ENACT THE NORTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT.*

Enacts *The North Carolina Illegal Immigration Reform Act*, and provides that all requirements of this proposed act regarding the classification of immigration status are to be construed to conform to federal law.

Verification of employee work authorization. Amends GS Chapter 153A, Article 5 (applying to counties), by enacting new GS 153A-94.3 to require counties to register and participate, or attempt to register and participate in the *federal work authorization program* to verify work authorization information on all new employees. Also amends GS Chapter 160A, Article 7 (applying to cities) by enacting new GS 160A-164.3 to require cities to register and participate, or attempt to register and participate in the *federal work authorization program* to verify work authorization information on all new employees. Defines the term *federal work authorization program* to mean any of the electronic verification of work authorization programs or any equivalent operated by the US Department of Homeland Security under the Immigration and Reform and Control Act of 1986. Provides that the proposed new sections are to be enforced without regard to race, religion, gender, ethnicity, or national origin.

Amends GS Chapter 64 to add new Article I and Article II. Recodifies GS 64-1 through GS 64-5 as Article 1 of GS Chapter 64, with the title *Various Provisions Relating to Aliens*.

Unlawful Transfer or Concealment of an Alien. Enacts new GS 64-6, in proposed Article 1 of GS Chapter 64, to make it a Class G felony for a person to knowingly, or in reckless disregard of the fact that another person has come to, entered, or remained in the US illegally, transport, move, or attempt to transport that person within the state, or solicit or conspire to transport or move that person within the state, with intent to further that person's unlawful entry into the US or avoid apprehension or detection by state or federal authorities. Also makes it a Class G felony for a person to knowingly, or in reckless disregard of the fact that another person has come to, entered, or remained in the US illegally, conceal, harbor, or shelter from detection, or to solicit or conspire to conceal, harbor, or shelter from detection, that person in any place, including a building or means of transportation, with the intent to further that person's unlawful entry into the US or avoid apprehension or detection by state or federal authorities. Prohibits any person, who (1) violates, (2) is convicted of, (3) pleads guilty to, or (4) enters into a plea of no contest to a violation of this section, from obtaining any professional license offered by the state, a state agency, or political subdivision. Creates exemptions for certain entities, programs, services, and assistance. Specifies that the provision of health care treatment or services to a natural person who is in the US unlawfully is not a violation of this section.

Public contractors to use the federal work authorization program. Also creates GS Chapter 64, Article 2, *Unauthorized Aliens and Public Contracts*, GS 64-10 through GS 64-17. Provides definitions for the following terms as used in the proposed Article 2: (1) end product; (2) federal work authorization program; (3) public agency, and (4) unauthorized alien. Requires that contractors with public agencies register and participate in the federal work authorization program to verify the work authorization of all new employees; additionally requires that a contractor with a public agency require the same diligence from subcontractors and that the subcontractors in turn require participation and registration in the federal work authorization program from all sub-subcontractors. Also prescribes acceptable valid forms of identification that contractors with public agencies must require from employees. Prohibits dividing a bill or contract for the purpose of evading the provisions of proposed Article 2.

Provides that a public agency is in compliance with proposed Article 2 if the agency obtains a written statement from the contractor that certifies that the contractor will (1) comply with the requirements of GS Chapter 64, and (2) provide the agency with required documentation. Does not require the public agency to independently verify a contractor's compliance.

Prohibits sanctions, or any state or local civil or administrative action for employing an unauthorized alien against a contractor or public agency that complies in good faith with the requirements of proposed Article 2.

Prohibits a local government from adopting any ordinance or policy that limits or prohibits authorities from enforcing the provisions of GS Chapter 64.

Makes it a Class H felony to knowingly make or file any false, fictitious, or fraudulent document, statement, or report pursuant to Article 2.

Directs the Secretary of Administration to prescribe forms and adopt rules to implement proposed GS Chapter 64, Article 2.

Provides that the provisions of Article 2 do not apply to certain contracts if: (1) the public agency is the state, or a state agency, board, department, or commission, and the total value of the contract to be performed in a 12-month period is \$25,000 or less; (2) the public agency is a county, municipality, or an agency of a county or municipality, and the total value of the contract to be performed in a 12-month period is \$15,000 or less; (3) the total cost of the physical performance of manual labor is less than 5% of the total contract price; (4) the contract is primarily for the acquisition of an end product; or (5) the contract is predominantly for the performance of professional or consultant services.

Makes a conforming change to GS 143-129.

Private employers to use the federal work authorization program. Further amends GS Chapter 64 by enacting Article 3, *Employment of Unauthorized Aliens* (regarding private employers), GS 64-20 through GS 64-25.

Provides definitions for the following terms as used in proposed Article 3: (1) specifies that *knowingly employ an unauthorized alien* refers to the actions described in 8 U.S.C. Section 1324a(a)(1)(A); (2) *unauthorized alien* refers to an alien who does not have the legal right or authorization to work in the United States as described in 8 U.S.C. Section 1324a(h)(3); and (3) *intentionally* means acting with the objective of causing a particular result or purposefully engaging in that conduct. Also includes additional definitions for (1) agency; (2) employee; (3) independent contractor; (4) employer; (5) license; and (6) social security number verification service. Defines *federal work authorization program* with the same meaning previously specified.

Prohibits an employer from knowingly employing unauthorized aliens. Directs the state Attorney General (AG) to prescribe a complaint form for reporting the violation of employing an unauthorized alien. Provides that upon the receipt of a complaint form alleging a violation, the AG or the county attorney is to investigate the alleged violation. Provides guidelines for conducting the investigation of the allegations. Directs that if after an investigation, the AG or county attorney determines that the complaint is not false or frivolous then the AG or county attorney is to notify: (1) the United States Customs and Immigration Enforcement of the presence of the unauthorized alien; and (2) local law enforcement agencies of the presence of the unauthorized alien. Directs the AG to notify the appropriate county attorney if the complaint was originally filed with the AG. Makes it a Class 2 misdemeanor to knowingly file a false and frivolous complaint.

Directs the county attorney in the county where the violation of federal immigration law occurred to bring an action against the offending employer; however, restricts the county attorney from bringing an action against an employer for a violation of federal immigration law that occurred before January 1, 2010. Directs the court to treat a violation a violation of federal law as if it were a violation of state law and to proceed accordingly under proposed new GS 62-22(e) (providing for penalties against the employer who knowingly employs an unauthorized alien that include suspension of licenses, the permanent revocation of licenses, and the imposition of probationary periods).

Directs the AG to maintain copies of court orders issued regarding a violation of proposed GS 62-22(e), to maintain a database of employers convicted of a first violation, and to make the court orders available on the AG's web site.

Provides instruction to the court on determining whether an employee is an unauthorized alien. Provides that an employer providing proof of verifying the employment authorization of an employee using the federal work authorization program creates a rebuttable presumption that the employer did not knowingly employ an unauthorized alien. Also provides that an employer who demonstrates that the employer has complied in good faith with the requirements of 8 U.S.C. Section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. Provides additional guidelines regarding complying with federal and state law.

Directs that, after December 31, 2009, employers must use the federal work authorization program to verify the employment eligibility of an employee.

Makes it an unfair trade practice as defined in GS 75-1.1, for an employer to discharge a lawfully authorized employee while knowingly employing an unauthorized alien. Provide that the discharged employee has a right of action under GS 75-16.

Immigration Assistance Registration Act. Enacts a new Article 4 to GS Chapter 64 entitled the Immigration Assistance Registration Act, establishing and enforcing ethical standards for non-attorneys providing immigration assistance services. Requires any person who provides immigration assistance services to register with the Secretary of State (Secretary) and authorizes the Secretary to charge a maximum fee of \$20 to cover administrative costs. Requires the Secretary to maintain a registry that is open for public inspection. Exempts (1) attorneys and those working under their supervision, (2) nonprofit organizations recognized by the Board of Immigration Appeals under 8 CFR 292.2(d), and (3) organizations employing or desiring to employ aliens or nonimmigrant aliens that provide immigration advice or assistance without compensation. Limits the kinds of services that persons registered as immigration assistance service providers may perform to (1) completing those forms that do not require the use of legal judgment; (2) transcribing customer responses onto government agency forms; (3) translating information on forms for customer answers to forms; (4) helping the customer to secure existing supporting documents; (5) translating documents from a foreign language into English; (6) notarizing government agency forms, if commissioned as a notary public in this state; (7) arranging for photographing, fingerprinting, and medical testing; (8) making attorney referrals; and (9) conducting English and civics courses. Prohibits providers of immigration assistance services from giving any legal advice or allowing customers to believe that they possess any special professional skills or knowledge with respect to immigration matters and requires providers to post conspicuous notices to that effect. A person violating this Article is subject to a fine of up to \$1,000 for each violation. Also makes it a Class H felony to willfully (1) make a false, fictitious, or fraudulent statement or representation in any document or prepared or executed as a part of immigration assistance services, (2) aid or abet a person in making such a statement, and (3) solicit or conspire to make such a statement. Provides that it is a separate violation each time a person participates in making such a statement. Requires that a person convicted under this section make restitution to any agency or political subdivision that administered a benefit or entitlement program that provided a person with a benefit as a result of the violation.

Verification of Eligibility for Public Benefits. Enacts a new Article 5 of GS Chapter 64 entitled "Verification of Eligibility for Public Benefits," requiring state agencies or political subdivisions to verify that any person 18 years of age or older who applies for state, local, or federal public benefits that are administered by a state agency or political subdivision is legally in the US. Prohibits any state agency or political subdivision from providing any state, local, or federal public benefit in violation of this Article. Requires that state agencies and political subdivisions verify eligibility for benefits by obtaining an affidavit from each applicant and confirming eligibility through the Systemic Alien Verification of Entitlement (SAVE) program or a successor program designated by the US Department of Homeland Security. Makes it a Class H felony for any person to knowingly making a false representation in an affidavit executed for the purposes of obtaining public benefits. Allows state agencies or political subdivisions to adopt rules or ordinances providing for waiver of the required verification process to improve efficiency or reduce delay in the verification process or to provide adjudication in unique circumstances where the requirement imposes unusual hardship on a legal resident of the state. Requires reporting of errors or unusual delays by SAVE. Effective for applications made and acts committed on or after January 1, 2010.

Facilitate enforcement of federal immigration laws in North Carolina. Enacts new GS 15A-407 to direct the state AG to negotiate the terms of a memorandum of understanding between North Carolina and the United States Department of Justice or Department of Homeland Security, as authorized by 8 U.S.C. Section 1357(g) regarding the enforcement of federal immigration and customs laws, detention and removals, and investigations in the state. Provides additional guidelines regarding the training of law enforcement to enforce the signed memorandum of understanding.

Enacts new GS 15A-408 to prohibit a municipality, county, or other political subdivision of the state from enacting any prohibitions that would limit enforcement of a state immigration law or

prevent cooperating with federal officials regarding immigration status of any person in this state. Declares any such enactment to be in conflict with federal law and to be void.

Tax Changes. Amends GS 105-130.5(a), and GS 105-134.6(c) (corporate and individual income tax) to provide that amounts in excess of \$600 that are paid to an unauthorized alien as wages or compensation must be added to federal taxable income in determining NC taxable income, to the extent those amounts are not included in federal taxable income. Amends GS 105-130.2 and GS 105-134.6 to define unauthorized alien. Effective for taxable years beginning on or after January 1, 2010.

Amends GS 105-163.1 (the definition section for withholding and estimated state income tax for individuals) to include an unauthorized alien who performs any personal services in this state for compensation other than wages in the definition of *contractor*. Adds a definition for *unauthorized alien* and specifies that the consideration a payer pays an *unauthorized alien* falls under the definition of *compensation*. Also makes a technical change. Effective for payments made on or after January 1, 2010.

Presumption against pretrial release of illegal aliens. Amends GS 15A-533 (regarding right to pretrial release in capital and non-capital cases), to create a rebuttable presumption that there is no condition of release that will reasonably assure, (1) that a person who is unlawfully present in the U.S. will appear at court as required, and (2) the safety of the community, if a judicial official finds that the unlawfully present person has committed one or more of the following offenses: a violent felony, a drug offense, or a gang offense.

Identity Theft. Amends GS 14-113.20(a) to add that a person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purpose of *obtaining employment* is guilty of a felony punishable as provided in GS 14-113.22(a) (Class G Felony, except when punishable as a Class F felony in specified circumstances). Makes stylistic changes.

Prohibit illegal aliens from public postsecondary education. Amends GS 115D-5(a) to provide that the admission standards of the State Board of Community Colleges and the admissions standards of all local community colleges must prohibit the admission of persons who are not lawfully present in the United States, except as otherwise required by federal law. Makes a conforming change to GS 115D-1 (regarding statement of purpose for community college system).

Amends GS 116-11 to direct the UNC Board of Governors to adopt a policy that prohibits the admission of any person who is not lawfully present in the United States to any constituent institution in the University of North Carolina system, except as required by federal law.

Provisions are severable. Provides that if any provisions of the proposed provisions or their applications are held to be invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provisions or applications.

Intro. by Allran.

GS 14, 15A, 64, 105, 115D, 116, 153A, 160A