

March 4, 2009

**S 398. SECURITY AND IMMIGRATION COMPLIANCE.** Filed 3/4/09. *TO ESTABLISH THE NORTH CAROLINA SECURITY AND IMMIGRATION COMPLIANCE ACT TO PROVIDE FOR THE COMPREHENSIVE REGULATION OF PERSONS IN THIS STATE WHO ARE NOT LAWFULLY PRESENT IN THE UNITED STATES.*

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

*Verification of work authorization.* Adds a new Article 24, *Workplace Immigration Compliance*, to GS Chapter 95. Defines the following terms as they apply in the proposed new article: (1) *Commissioner*—the Commissioner of the North Carolina Department of Labor; (2) *federal work authorization program*—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; (3) *public employer*—every state agency, department, or institution of the state, or any county or incorporated municipality; (4) *subcontractor*—subcontractor, contract employee, staffing agency, or any contractor. Provides that the proposed new Article is to be enforced without regard to race, religion, gender, ethnicity, or national origin.

Requires every public employer to register and participate in the federal work authorization program to verify work authorization information on all new employees. Prohibits a public employer from entering into a contract for the physical performances of services within North Carolina unless the contractor registers and participates in the federal work authorization program. Also prohibits any contractor or subcontractor entering into a contract with a public employer from doing so unless the contractor or subcontractor registers and participates in the federal work authorization program. Provides that these provisions requiring registration and participation in the federal work authorization program take effect for public employers, contractors, or subcontractors on staggered dates depending on the number of persons they employ: (1) 500 or more employees, applies as of January 1, 2010; (2) 100 or more employees, applies as of April 1, 2010; (3) all employees, regardless of the number, applies as of July 1, 2010.

Assigns rule-making authority to the Commissioner of the Department of Labor, except authorizes the Department of Transportation to adopt rules deemed necessary for the application of this proposed Article to any contract relating to public transportation. Requires that the rules and regulations be published on the respective websites of the Department of Labor and the Department of Transportation.

*Enforcement of federal immigration laws.* Enacts new GS 15A-407 to direct the Secretary of Crime Control and Public Safety (Secretary) to negotiate the terms of a memorandum of understanding between North Carolina and the United States Department of Justice or Department of Homeland Security (Homeland Security) as regarding the enforcement of federal immigration and customs laws, detention and removals, and investigations in the state. Provides that the negotiated memorandum of understanding is to be signed on behalf of the state by the Secretary and the Governor or as otherwise required by the appropriate federal agency. Provides additional guidelines regarding the training of law enforcement to enforce the signed memorandum of understanding and directs that the training be funded pursuant to the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any subsequent source of federal or state funding.

*Immigration Assistance Registration Act.* Enacts new GS Chapter 84B 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) licensed attorneys and those working under their supervision, (2) nonprofit organizations recognized by the Board of Immigration Appeals under 8 CFR Section 292.2(a) and employees of those organizations accredited under 8 CFR Section 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. Also prohibits persons providing immigration assistance services who are not exempt under this chapter for accepting payment in exchange for providing any type of legal advice or analysis. Provides a listing of additional prohibited conduct on the part of non-exempt persons under this proposed Chapter.

A person violating proposed new Chapter 84B is subject to a fine of up to \$1,000 for each violation. Also provides that a person who violates any provision of this Chapter is guilty of a Class 2 misdemeanor for the first offense and a Class 1 misdemeanor for any subsequent offenses that are committed within five years of a previous conviction for the same offense.

*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 to define unauthorized alien as it is defined in 8 USC Section 1324a(h)(3), and amends GS 105-134.1 to define the term as amended in GS 105-130.2. 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.

*Verification of lawful presence required to receive public benefits.* Enacts new GS Chapter 135A, *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 Chapter. 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. Directs each state or local agency or political subdivision that administers any program of public benefits to submit an annual report regarding its compliance with this section to the General Assembly and the Governor no later than March 1 of each year.

Defines the following terms as they are defined under federal law: (1) emergency medical condition [42 USC Section 1396b(v)(3)]; (2) federal public benefit [8 USC Section 1611]; and (3) state or local benefit [8 USC Section 1621].

Lists exemptions for which verification of lawful presence will not be required, including certain health care items and services, public health assistance for immunizations, assistance programs and services such as soup kitchens and short-term shelter, prenatal care, emergency disaster relief, and any purposes for which lawful presence is not required by law, ordinance, or regulation.

Makes it a Class I felony for any person to knowingly and willfully make a false, fictitious, or fraudulent representation in an affidavit executed for the purposes of obtaining public benefits. However, provides that an applicant for federal, state, or local benefits who executes an affidavit

attesting to lawful presence in the United States that contains a false statement is not guilty of a crime if the affidavit is not required to be proffered by this section.

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 the affected state agency or political subdivision to report errors or unusual delays by SAVE to Homeland Security. Effective for applications made and acts committed on or after January 1, 2010.

*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.

Except as otherwise indicated, this act becomes effective January 1, 2010.

**Intro. by Clary.**

GS 15A, 84B, 95, 105, 135A