

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 343

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

Sponsors: Representatives Cleveland, Blust, and Hilton (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A, if favorable, Commerce and Job Development.

March 15, 2011

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."

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

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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**

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

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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           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.