

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS85096-MD-47 (02/23)

Short Title: NC Illegal Immigration Enforcement Act.

(Public)

Sponsors: Senator East.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA ILLEGAL IMMIGRATION
3 ENFORCEMENT ACT.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. SHORT TITLE**

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8 **SECTION 1.** This act shall be known and may be cited as "The North Carolina
9 Illegal Immigration Enforcement 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. Determination of immigration status of persons lawfully stopped or detained.**

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

30 (b) Certain Actions Required Where Smuggling Suspected. – When a law enforcement
31 officer or law enforcement agency makes a lawful stop, detention, or arrest as part of the
32 enforcement of any other law or ordinance, and while investigating or processing the primary
33 offense, the officer or agency makes observations that give the officer reasonable suspicion that
34 the operator or any of the passengers in the vehicle are violating any provision of Article 10A



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1 of Chapter 14 of the General Statutes or G.S. 64-14, the officer or agency shall, to the extent
2 possible within a reasonable period of time, do all of the following:

3 (1) Detain the occupants of the vehicle to investigate the suspected violations.

4 (2) Inquire regarding the immigration status of the occupants of the vehicle.

5 (c) Presumption Against Being an Unlawfully Present Alien. – A person is presumed
6 not to be an alien who is unlawfully present in the United States for purposes of this section if
7 either of the following is true:

8 (1) The person provides to the law enforcement officer or law enforcement
9 agency any of the following:

10 a. A valid North Carolina drivers license.

11 b. A North Carolina special identification card.

12 c. A valid tribal enrollment card or other form of tribal identification.

13 d. If the entity requires proof of legal presence in the United States
14 before issuance, any valid federal, State, or local government issued
15 identification, so long as the identification includes a photo or
16 biometric identifier.

17 (2) The person makes a statement or affirmation to the law enforcement officer
18 or agency that the person is a United States citizen or national, unless the
19 officer or agency has a reasonable suspicion that the statement or affirmation
20 is false.

21 **"§ 64-11. Determination of immigration status of persons arrested.**

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

24 **"§ 64-12. Permissible methods for verifying immigration status under this Article;**
25 **transfer and maintenance of information.**

26 (a) Verification Procedure. – Verification of a person's immigration status pursuant to
27 this Article shall be made as promptly as is reasonably possible and consistent with federal law
28 and may be made by any of the following methods, as applicable:

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

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

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

33 (b) Transfer and Maintenance of Information Permitted. – Except as limited by federal
34 law, a State or local agency or political subdivision may maintain information related to the
35 immigration status of any person and may send and receive that information to any federal,
36 State, or local agency for any lawful purpose, including:

37 (1) Determining a person's eligibility for a public benefit, service, or license
38 provided by a federal agency, this State, or a political subdivision of this
39 State.

40 (2) Confirming a person's claim of residence or domicile if determination is
41 required by State law or a judicial order issued pursuant to a civil or criminal
42 proceeding in this State.

43 (3) Determining if the person is in compliance with the federal registration laws
44 of Title II, Part 7 of the Immigration and Nationality Act.

45 (4) Making a valid request for verification of the citizenship or immigration
46 status of any person pursuant to 8 U.S.C. § 1373.

47 **"§ 64-13. Request for federal detainer for aliens not lawfully present in the United States;**
48 **transport of alien.**

49 (a) Request for Federal Detainer Required. – Any law enforcement officer or law
50 enforcement agency that has custody of a person verified to be an alien who is not lawfully

1 present in the United States shall request that the United States Department of Homeland
2 Security issue a detainer requesting transfer of the illegal alien into federal custody.

3 (b) Transport of Alien Permitted. – Notwithstanding any other provision of law, a State
4 or local law enforcement agency may securely transport an alien who is in the agency's custody
5 and whom the agency has verified is unlawfully present in the United States to a federal
6 detention facility in this State or, with the concurrence of the receiving federal agency, to a
7 federal facility or other point of transfer to federal custody that is outside this State.

8 **§ 64-14. Unlawful transporting, moving, concealing, harboring, or shielding of aliens not**
9 **lawfully present in the United States.**

10 (a) Offense. – It is unlawful for a person to do any of the following for commercial
11 advantage or private financial gain:

12 (1) Transport, move, or attempt to transport into this State, or within this State,
13 an alien knowing or in reckless disregard of the fact that the alien is in the
14 United States in violation of federal law, in furtherance of the illegal
15 presence of the alien in the United States.

16 (2) Knowingly, with the intent to violate federal immigration law, conceal,
17 harbor, or shelter from detection an alien in a place within this State,
18 including a building or means of transportation, knowing or in reckless
19 disregard of the fact that the alien is in the United States in violation of
20 federal law.

21 (3) Encourage or induce an alien to come to, enter, or reside in this State,
22 knowing or in reckless disregard of the fact that the alien's coming to, entry,
23 or residence is or will be in violation of law.

24 (4) Engage in any conspiracy to commit any of the offenses set forth in this
25 subsection.

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

29 (c) Exception for Ministers and Missionaries. – It is not a violation of this section for a
30 religious denomination or organization or an agent, officer, or member of a religious
31 denomination or organization to encourage, invite, call, allow, or enable an alien to perform the
32 vocation of a minister or missionary for the denomination or organization in the United States
33 as a volunteer who is not compensated as an employee, notwithstanding the provision of room,
34 board, travel, medical assistance, and other basic living expenses.

35 (d) Other Exceptions. – Nothing in this section prohibits or restricts the provision of any
36 of the following:

37 (1) A state or local public benefit described in 8 U.S.C. § 1621(b).

38 (2) Charitable or humanitarian assistance, including medical care, child
39 protective services, housing, counseling, food, victim assistance, religious
40 services and sacraments, and transportation to and from a location where the
41 assistance is provided, by a charitable, educational, or religious organization
42 or its employees, agents, or volunteers, using private funds.

43 **§ 64-15. Certain restrictions by State and local agencies prohibited.**

44 A State or local agency or other political subdivision of this State shall not limit or by any
45 means restrict by ordinance, regulation, policy, practice, or in any other manner, either of the
46 following:

47 (1) The authority of any law enforcement agency or law enforcement officer, or
48 any State or local governmental agency to assist the federal government in
49 the enforcement of any federal law or regulation governing immigration.

50 (2) The authority of any law enforcement agency or law enforcement officer to
51 investigate or enforce any violation of the federal misdemeanor offenses of

1 willful failure to register as an alien or willful failure to personally possess
2 an alien registration document, as required by 8 U.S.C. §§ 1304(e) or
3 1306(a).

4 **"§ 64-16. Implementation to be consistent with other laws and civil rights.**

5 Law enforcement officers and agencies shall not consider race, color, religion, or national
6 origin in the enforcement of this Article except to the extent permitted by the United States or
7 North Carolina Constitutions. All State and local agencies shall implement this Article in a
8 manner that is consistent with federal laws that regulate immigration, protect civil rights of all
9 persons, and establish the privileges and immunities of United States citizens.

10 **"§ 64-17. Proof of eligibility required in order to receive public benefits.**

11 (a) Verification Required. – Except as provided in subsection (b) of this section or
12 when exempted by federal law, an agency or political subdivision of this State shall verify the
13 lawful presence in the United States of an individual at least 18 years of age who applies for a
14 state or local public benefit or a federal public benefit that is administered by an agency or
15 political subdivision of this State.

16 (b) Exceptions. – Verification of lawful presence pursuant to this section is not required
17 for applications for any of the following:

18 (1) A federal public benefit that is enumerated in 8 U.S.C. § 1611(b).

19 (2) A federal public benefit for which lawful presence in the United States is not
20 required.

21 (3) A State or local public benefit enumerated in 8 U.S.C. § 1621(b).

22 (c) Method of Verification. – A State agency or political subdivision of this State
23 required to verify the lawful presence in the United States of an applicant under this section
24 shall do all of the following:

25 (1) Require the applicant to sign, under penalty of perjury, an affidavit under
26 penalty of perjury that the person is either:

27 a. A United States citizen.

28 b. A qualified alien as that term is defined in 8 U.S.C. § 1641.

29 (2) Verify the applicant's eligibility for the benefit through the SAVE program.

30 (d) Contents and Function of Affidavit. – The affidavit required under subsection (c) of
31 this section shall contain a statement advising the signer that providing false information
32 subjects the signer to penalties for perjury. Until an applicant's eligibility for a benefit is
33 verified through the SAVE program, the affidavit may be presumed to be proof of lawful
34 presence for purposes of this section.

35 (e) False Claims of Citizenship. – In addition to any penalty for perjury, if an affidavit
36 constitutes a false claim of United States citizenship under 18 U.S.C. § 911, the agency
37 requiring the affidavit shall file a complaint with the United States Attorney for the applicable
38 federal judicial district based upon the venue in which the affidavit was executed.

39 (f) Reporting of Suspected Fraud. – If a State agency or political subdivision
40 determines that it has reasonable suspicion that a person applying for a public benefit has
41 violated or attempted to violate any fraud provision of the General Statutes, it shall provide all
42 relevant information to a local law enforcement agency.

43 (g) Variations Permitted. – A State agency or political subdivision may, with the
44 concurrence of the North Carolina Attorney General, adopt variations to the requirements of
45 this section that clearly improve the efficiency of or reduce delay in the verification process or
46 provide for adjudication of unique individual circumstances where the verification procedures
47 in this section would impose an unusual hardship on a legal resident of North Carolina.

48 (h) Noncompliance Unlawful. – It is unlawful for a State agency or political subdivision
49 of this State to provide a federal public benefit or a state or local public benefit in violation of
50 this section.

51 (i) Definitions. – The following definitions apply in this section:

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

2 (2) SAVE program. – The Systematic Alien Verification for Entitlements
3 program operated by the United States Department of Homeland Security or
4 a successor or equivalent program designated by the Department of
5 Homeland Security.

6 (3) State or local public benefit. – As defined in 8 U.S.C. § 1621.

7 **"§ 64-18. Legal resident may bring action regarding agency that limits enforcement of**
8 **federal immigration laws.**

9 (a) Policies Restricting Enforcement of Federal Law Prohibited. – A State agency or
10 political subdivision of this State shall not adopt or implement any policy that limits or restricts
11 the enforcement of federal immigration laws, including 8 U.S.C. § 1373 and 8 U.S.C. § 1644,
12 to less than the full extent permitted by federal law.

13 (b) Suit to Enforce. – Any resident of this State may bring a civil action to enforce the
14 prohibition contained in subsection (a) of this section, or to enforce G.S. 64-17, against any
15 governmental entity that adopts or implements a policy that violates that prohibition. The action
16 shall be commenced in superior court in the county where the alleged violation is occurring.
17 The court shall order recovery of court costs and reasonable attorneys' fees to a party that
18 prevails on the merits and, if there is a judicial finding that an entity has violated subsection (a)
19 of this section, shall also order the entity to pay a civil fine of not less than five hundred dollars
20 (\$500.00) and not more than five thousand dollars (\$5,000) for each day that the policy has
21 remained in effect after the filing of an action pursuant to this subsection. The clear proceeds of
22 these fines shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
23 G.S. 115C-457.2.

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

30 **SECTION 3.** G.S. 15A-401(b)(2) reads as rewritten:

31 "(b) Arrest by Officer Without a Warrant. –

32 ...

33 (2) Offense Out of Presence of Officer. – An officer may arrest without a
34 warrant any person who the officer has probable cause to believe:

35 a. Has committed a felony; or

36 b. Has committed a misdemeanor, and:

37 1. Will not be apprehended unless immediately arrested; or

38 2. May cause physical injury to himself or others, or damage to
39 property unless immediately arrested; or

40 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,
41 20-138.1, or 20-138.2; or

42 d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1),
43 14-33(c)(2), or 14-34 when the offense was committed by a person
44 with whom the alleged victim has a personal relationship as defined
45 in G.S. 50B-1; or

46 e. Has committed a misdemeanor under G.S. 50B-4.1(a); or

47 f. Has violated a pretrial release order entered under
48 G.S. 15A-534.1(a)(2).

49 g. Is an alien:

50 1. Who is subject to a civil removal order issued by an
51 immigration judge;

