



# HOUSE BILL 63: Citizens Protection Act of 2017.

**This Bill Analysis  
reflects the  
contents of the bill  
as it was presented  
in committee.**

2017-2018 General Assembly

|                       |  |                     |                                  |
|-----------------------|--|---------------------|----------------------------------|
| <b>Committee:</b>     | House Judiciary II. If favorable, re-refer to Appropriations | <b>Date:</b>        | March 7, 2017                    |
| <b>Introduced by:</b> | Reps. Warren, Collins, Jordan, Adams                         | <b>Prepared by:</b> | Susan Sitze<br>Committee Counsel |
| <b>Analysis of:</b>   | PCS to First Edition<br>H63-CSSA-2                           |                     |                                  |

**OVERVIEW:** *House Bill 63 would increase penalties for the manufacture or sale of counterfeit documents, would create a rebuttable presumption against the pretrial release of certain undocumented aliens, would make provisions regarding immigration status records and law enforcement transport of illegal aliens, and would withhold certain funds from local governments that fail to comply with State laws related to immigration.*

*The Proposed Committee Substitute creates a process to determine noncompliance with State laws related to immigration.*

## BILL ANALYSIS:

**Section 1** of the bill would provide that this act be known as "The Citizens Protection Act of 2017."

**Section 2** of the bill would amend various statutes related to the fraudulent use of identification.

**Section 2(a)** of the bill would make the following changes to the prohibition on false or fraudulent forms of identification pursuant to G.S. 14-100.1:

- ❖ Create a new Class G felony for the sale of a false or fraudulent form of identification for the purpose of deception, fraud, or other criminal conduct.
- ❖ Increase the penalty for manufacturing such identification from a Class 1 misdemeanor to a Class G felony. Possession of such identification would remain a Class 1 misdemeanor.

**Section 2(b)** of the bill would modify G.S. 20-30 as follows:

- ❖ Counterfeiting, selling, lending, or knowingly permitting the use of a driver's license, learner's permit, or special identification card would have the following penalties:
  - A violation by a person under 21 for the purpose of the underage purchase of alcohol would be increased to a Class 1 misdemeanor (currently a Class 2 misdemeanor).
  - A violation by a person under 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers would be a Class 2 misdemeanor (same as current law).
  - Any other violation would be a Class G felony.
- ❖ Selling or offering for sale any reproduction, facsimile, or simulation of a driver's license, learner's permit, or special identification card would be increased to a Class G felony (currently a Class I felony).

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- ❖ Create a new Class 2 misdemeanor for possession of more than one special identification card for fraudulent purpose.

**Section 3** of the bill would make modifications to the process of pretrial release for persons unlawfully present in the United States. **Section 3(a)** would create a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial officer finds either of the following:

- ❖ There is probable cause to believe that the person committed one or more of the following offenses:
  - An offense which would require sex offender registration.
  - An A through E felony or any offense, except simple assault, with assault as an essential element.
  - An offense that requires a mandatory driver's license revocation upon a first conviction.
  - A violation of G.S. 90-95 other than what is commonly referred to as "simple possession".
  - A gang offense included in Article 13A of Chapter 14.
- ❖ There is probable cause to believe the person committed an offense not listed above and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.

**Section 3(b)** would require any judicial official who releases an alien who is not lawfully present in the US and who has been charged with a felony or a Class A1 misdemeanor to require the defendant to execute a secured appearance bond as a condition of pretrial release.

**Section 4** of the bill would enact several new statutes in Article 1 of Chapter 64, Various Provisions Related to Aliens, as follows:

- ❖ G.S. 64-6 would provide how verification of immigration status should be conducted.
- ❖ G.S. 64-7 would provide for the introduction of verification of immigration status in court proceedings.
- ❖ G.S. 64-8 would authorize a State or local law enforcement agency to transport an alien in the agency's custody to a federal facility in this State or outside the State. Judicial or executive authorization must be obtained before transporting an alien outside the State.
- ❖ G.S. 64-9 provides for severability of any statute in this Chapter found invalid or unconstitutional.

**Section 5** of the bill would provide a process to withhold certain funds from local governments that are not in compliance with certain State laws related to immigration.

**Section 5(a)** would add a new Article 3 to Chapter 64 entitled "Local Government Noncompliance With State Laws Related to Immigration." These statutes would do the following:

- ❖ Allow a person to file a statement with the Attorney General alleging that a local government or law enforcement agency is not in compliance with a State law related to immigration. A state law related to immigration is defined as G.S. 153A-145.5 or 160A-205.2 (see **Background** for full statutes)

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- ❖ Require the Attorney General to commence an investigation within 45 days and conclude that investigation within 60 days of its commencement. The Attorney General may request the assistance of the State Bureau of Investigation (SBI).
  - During the investigation, reports and other investigative documents and records connected to the investigation are confidential and not public record unless the local government requests they be made public.
  - These documents become public record at the close of the investigation or after 60 days, whichever is first, unless otherwise privileged or confidential under law.
- ❖ Withhold distribution of funds if the Attorney General determines a local government or law enforcement agency is not in compliance with a State law related to immigration. The funds would be withheld from the municipality or county not in compliance, or the municipality or county whose law enforcement agency is not in compliance. The funds disbursed under the following statutes would be withheld:
  - G.S. 105-113.82 (Beer and wine excise tax)
  - G.S. 105-164.44F (Telecommunications tax)
  - G.S. 105-164.44I (Sales tax on video programming service/telecommunication service)
  - G.S. 105-164.44L (Tax on piped natural gas to cities)
  - G.S. 105-187.16 (Tire tax)
  - G.S. 136-41.1 (DOT State aid to municipalities, aka "Powell Bill" funds)
- ❖ Withhold distribution of funds if the Commissioner of Labor finds a municipality, a county, or a local school administrative unit government by a local board to be in violation of the E-Verify statutes. The same statutory funds as listed above would be withheld from the municipality, the county, or any municipality or county in which all or part of the local school administrative unit is located.
- ❖ Allow any person who resides within the jurisdiction of a city, count, or law enforcement agency that the person believes is not in compliance with a State law related to immigration to bring an action for declaratory and injunctive relief.

**Sections 5(b) through 5(j)** would make conforming changes to other statutes to effectuate the provisions of Section 5(a) of the bill.

**EFFECTIVE DATE:** Sections 2 and 3 of this act would become effective December 1, 2017, and apply to offenses committed on or after that date. Section 5 of this act would become effective August 1, 2017. The remainder of this act is effective when it becomes law. This bill contains a severability clause.

## **BACKGROUND:**

### **§ 153A-145.5. Adoption of sanctuary ordinance prohibited.**

(a) No county may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

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(b) No county shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

(1) Prohibit law enforcement officials or agencies from gathering such information.

(2) Direct law enforcement officials or agencies not to gather such information.

(3) Prohibit the communication of such information to federal law enforcement agencies.

## **§ 160A-205.2. Adoption of sanctuary ordinances prohibited.**

(a) No city may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(b) No city shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

(1) Prohibit law enforcement officials or agencies from gathering such information.

(2) Direct law enforcement officials or agencies not to gather such information.

(3) Prohibit the communication of such information to federal law enforcement agencies.