

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0208.02 Jerry Barry x4341

SENATE BILL 18-220

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A BILL FOR AN ACT

101 **CONCERNING A PROHIBITION ON SANCTUARY POLICIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill specifies that the state and any political subdivision of the state (jurisdiction) shall not:

- ! Prohibit or restrict any jurisdiction, official, or employee from sending to, or receiving from, federal immigration agencies information regarding the citizenship or immigration status of any individual;
- ! Prohibit or restrict a jurisdiction from doing any of the following with respect to information regarding the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

immigration status of any individual:

- ! Sending the information to, or requesting the information from, federal immigration agencies;
- ! Maintaining the information; or
- ! Exchanging the information with any other federal, state, or political subdivision of this state; or
- ! Encourage the physical harboring of an illegal immigrant.

A jurisdiction is deemed a sanctuary jurisdiction if it violates the prohibitions in the bill, is informed by the federal government that it is in violation of federal immigration law, or is denied federal grant money or eligibility for a federal grant due to noncompliance with federal immigration laws.

The bill also requires each jurisdiction to give written notice to its elected officials, employees, and law enforcement officers of their duty to comply with all federal laws concerning immigration.

The bill requires each jurisdiction to submit an annual report to the department of public safety (department) affirming that it has not violated the prohibitions in the bill, has not been notified by the federal government that it is in violation of federal immigration law, and has not been denied federal grant money or informed that it is ineligible for federal grant money due to noncompliance with federal immigration laws.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** The short title of this act is the "Public
3 Safety Protection Against Sanctuary Policies Act".

4 **SECTION 2.** In Colorado Revised Statutes, **add** part 21 to article
5 33.5 of title 24 as follows:

6 PART 21

7 PROHIBITION ON SANCTUARY POLICIES

8 **24-33.5-2101. Legislative declaration.** (1) THE GENERAL
9 ASSEMBLY FINDS AND DECLARES THAT IT IS NECESSARY TO ENSURE
10 CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS PART 21
11 THROUGHOUT THE STATE AND THAT, THEREFORE, EXCEPT AS OTHERWISE
12 SPECIFIED IN THIS PART 21, ADDRESSING SANCTUARY POLICIES AS
13 OUTLINED IN THIS PART 21 IS A MATTER OF STATEWIDE CONCERN.

1 (2) THE GENERAL ASSEMBLY FINDS THAT:

2 (a) ALTHOUGH ILLEGAL IMMIGRATION IS MAINLY A QUESTION OF
3 FEDERAL LAW, THE EFFECTS AND COST TO TAXPAYERS OF ILLEGAL
4 IMMIGRATION ARE FELT BY PERSONS THROUGHOUT THE COUNTRY AND IN
5 COLORADO;

6 (b) TO PROTECT THE SECURITY, SAFETY, AND WELL-BEING OF
7 PERSONS WITHIN THE UNITED STATES, FEDERAL LAWS PROHIBIT STATE
8 AND LOCAL GOVERNMENTS FROM RESTRICTING OR OBSTRUCTING THE
9 EXCHANGE OF INFORMATION, OR FROM PUNISHING PERSONS FOR
10 COOPERATING OR EXCHANGING INFORMATION, WITH FEDERAL
11 IMMIGRATION AUTHORITIES, AND STATE AND LOCAL GOVERNMENTS THAT
12 VIOLATE SUCH LAWS RISK LOSING FEDERAL GRANTS OR ELIGIBILITY FOR
13 FEDERAL GRANTS;

14 (c) THE COLORADO DEPARTMENT OF CORRECTIONS HAS REPORTED
15 THAT IN FISCAL YEAR 2016, THE STATE CORRECTIONS SYSTEM RECEIVED
16 A GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE IN THE
17 AMOUNT OF \$2,077,720 IN RECOGNITION OF THE COSTS OF INCARCERATING
18 2,039 CRIMINAL ALIEN INMATES, OR 14.7% OF ALL DEPARTMENT OF
19 CORRECTIONS INMATES. SINCE THE REPORTED AVERAGE COST PER
20 OFFENDER WAS \$37,958 ANNUALLY IN THE STATE CORRECTIONS SYSTEM
21 IN 2016, THE TRUE COST OF INCARCERATION FOR 2,039 CRIMINAL ALIEN
22 INMATES WAS AN ESTIMATED \$77,396,362, WHICH MEANS THAT THE
23 FEDERAL GRANT COVERED ONLY 2.7% OF THE TRUE INCARCERATION
24 COSTS AND LEAVES COLORADO WITH A NET, UNREIMBURSED COST TO
25 COLORADO TAXPAYERS OF \$75,318,642 IN FISCAL YEAR 2016.

26 (d) FEDERAL LAW ALSO EXPRESSLY PROHIBITS THE PHYSICAL
27 HARBORING OF PERSONS KNOWN TO BE UNLAWFULLY PRESENT IN THE

1 UNITED STATES, SO IT IS INAPPROPRIATE AND CONTRARY TO THE PUBLIC
2 SAFETY AND WELFARE FOR ANY STATE OR A LOCAL GOVERNMENT TO
3 ENCOURAGE, ENDORSE, OR IN ANY WAY SUPPORT ANY PUBLIC OR PRIVATE
4 ORGANIZATION SEEKING TO OFFER SO-CALLED "SANCTUARY PROTECTION"
5 TO PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES;

6 (e) AS JUSTICE KENNEDY STATED IN THE MAJORITY OPINION IN
7 *ARIZONA V. UNITED STATES*, 567 U.S. 387 (2012), "THE SUPREMACY
8 CLAUSE PROVIDES A CLEAR RULE THAT FEDERAL LAW 'SHALL BE THE
9 SUPREME LAW OF THE LAND'; . . . UNDER THIS PRINCIPLE, CONGRESS HAS
10 THE POWER TO PREEMPT STATE LAW . . . STATE LAW MUST GIVE WAY TO
11 FEDERAL LAW IN AT LEAST TWO OTHER CIRCUMSTANCES. FIRST, THE
12 STATES ARE PRECLUDED FROM REGULATING CONDUCT IN A FIELD THAT
13 CONGRESS . . . HAS DETERMINED MUST BE REGULATED BY ITS EXCLUSIVE
14 GOVERNANCE . . . SECOND, STATE LAWS ARE PREEMPTED WHEN THEY
15 CONFLICT WITH FEDERAL LAW." [CITATIONS OMITTED].

16 (f) IN STRIKING DOWN THREE ARIZONA LAWS CONCERNING
17 IMMIGRANTS BASED ON FEDERAL SUPREMACY, JUSTICE KENNEDY
18 FURTHER FOUND "THE FEDERAL POWER TO DETERMINE IMMIGRATION
19 POLICY IS WELL SETTLED. IMMIGRATION POLICY CAN AFFECT TRADE,
20 INVESTMENT, TOURISM, AND DIPLOMATIC RELATIONS FOR THE ENTIRE
21 NATION, AS WELL AS THE PERCEPTIONS AND EXPECTATIONS OF ALIENS IN
22 THIS COUNTRY WHO SEEK THE FULL PROTECTION OF ITS LAWS."

23 (3) THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT IT IS IN
24 THE BEST INTERESTS OF COLORADO TO PROHIBIT ITS STATE AND LOCAL
25 GOVERNMENTS FROM CREATING OR ENFORCING POLICIES OR ORDINANCES
26 THAT OBSTRUCT OR RESTRICT COMMUNICATION OR COOPERATION WITH
27 FEDERAL IMMIGRATION AGENCIES OR PERSONNEL.

1 **24-33.5-2102. Definitions.** AS USED IN THIS PART 21, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY.

4 (2) "JURISDICTION" MEANS THE STATE OR A POLITICAL
5 SUBDIVISION THEREOF ORGANIZED PURSUANT TO LAW, INCLUDING ANY
6 COUNTY; CITY AND COUNTY; CITY; MUNICIPALITY; SCHOOL DISTRICT,
7 SPECIAL DISTRICT, OR ANY OTHER DISTRICT; AGENCY; INSTRUMENTALITY;
8 LAW ENFORCEMENT AGENCY; AND ANY STATE INSTITUTION OF HIGHER
9 EDUCATION.

10 **24-33.5-2103. Compliance with federal immigration law -**
11 **restrictions on jurisdictions regulating official and employee**
12 **communications relating to immigration status - notice to officials**
13 **and employees - reports on compliance. (1) Compliance with federal**
14 **immigration law on communications and cooperation. A**
15 JURISDICTION:

16 (a) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1373 (a), PROHIBIT,
17 OR IN ANY WAY RESTRICT, ANY JURISDICTION, OFFICIAL, OR EMPLOYEE
18 FROM SENDING TO, OR RECEIVING FROM, FEDERAL IMMIGRATION AGENCIES
19 INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS,
20 LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL;

21 (b) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1373 (b) OR 8
22 U.S.C. SEC. 1644, PROHIBIT, OR IN ANY WAY RESTRICT, THE STATE OR
23 POLITICAL SUBDIVISION OF THIS STATE FROM DOING ANY OF THE
24 FOLLOWING WITH RESPECT TO INFORMATION REGARDING THE
25 IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL:

26 (I) SENDING THE INFORMATION TO, OR REQUESTING THE
27 INFORMATION FROM, FEDERAL IMMIGRATION AGENCIES;

1 (II) MAINTAINING THE INFORMATION; OR
2 (III) EXCHANGING THE INFORMATION WITH ANY OTHER FEDERAL,
3 STATE, OR POLITICAL SUBDIVISION OF THIS STATE; AND

4 (c) SHALL NOT, IN VIOLATION OF 8 U.S.C. SEC. 1324, ENCOURAGE
5 THE PHYSICAL HARBORING OF AN ILLEGAL IMMIGRANT.

6 (2) **Finding of sanctuary jurisdiction.** A JURISDICTION IS
7 DEEMED TO HAVE CREATED A SANCTUARY JURISDICTION POLICY FOR
8 PURPOSES OF THIS SECTION IF IT:

9 (a) VIOLATES THE PROVISIONS OF SUBSECTION (1) OF THIS
10 SECTION;

11 (b) IS NOTIFIED BY THE FEDERAL DEPARTMENT OF JUSTICE OR THE
12 FEDERAL DEPARTMENT OF HOMELAND SECURITY THAT IT IS NOT IN
13 COMPLIANCE WITH FEDERAL IMMIGRATION LAW; OR

14 (c) HAS BEEN DENIED FEDERAL GRANT MONEY OR BEEN FOUND
15 INELIGIBLE TO RECEIVE FEDERAL GRANT MONEY BASED ON LACK OF
16 COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

17 (3) **Federal court orders.** NOTHING IN THIS SECTION REQUIRES A
18 JURISDICTION, AN OFFICIAL, OR AN EMPLOYEE TO VIOLATE AN APPLICABLE
19 COURT RULING REGARDING THE ENFORCEMENT OF ANY PROVISION OF
20 FEDERAL IMMIGRATION LAW FROM THE UNITED STATES DISTRICT COURT
21 FOR THE DISTRICT OF COLORADO, THE UNITED STATES TENTH CIRCUIT
22 COURT OF APPEALS, OR THE UNITED STATES SUPREME COURT.

23 (4) **Notice to officials, employees, and law enforcement**
24 **officers.** THE GOVERNING BODY OF A JURISDICTION SHALL PROVIDE
25 WRITTEN NOTICE TO EACH ELECTED OFFICIAL, EMPLOYEE, AND LAW
26 ENFORCEMENT OFFICER OF THE JURISDICTION OF HIS OR HER DUTY TO
27 COMPLY WITH ALL FEDERAL LAWS RELATED TO IMMIGRATION, INCLUDING

1 8 U.S.C. SEC. 1373, 8 U.S.C. SEC. 1324, AND 8 U.S.C. SEC. 1644, AS
2 SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

3 (5) **Compliance reports.** ON OR BEFORE JANUARY 1, 2020, AND
4 ON OR BEFORE JANUARY 1 OF EACH YEAR THEREAFTER THROUGH
5 JANUARY 1, 2030, THE GOVERNING BODY OF EACH COUNTY, CITY AND
6 COUNTY, OR MUNICIPALITY HAVING A POPULATION OF AT LEAST
7 TWENTY-FIVE THOUSAND PEOPLE SHALL SUBMIT A WRITTEN REPORT AND
8 AN AFFIRMATION OF COMPLIANCE TO THE DEPARTMENT THAT INDICATES
9 THAT THE JURISDICTION:

10 (a) IS IN COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (1)
11 OF THIS SECTION;

12 (b) HAS NOT BEEN NOTIFIED BY THE FEDERAL GOVERNMENT THAT
13 IT IS NOT IN COMPLIANCE WITH FEDERAL IMMIGRATION LAW; AND

14 (c) HAS NOT BEEN DENIED FEDERAL GRANT MONEY OR BEEN
15 FOUND INELIGIBLE TO RECEIVE FEDERAL GRANT MONEY AS DESCRIBED IN
16 SUBSECTION (2) OF THIS SECTION.

17 (6) **Annual report.** ON OR BEFORE APRIL 1, 2020, AND ON OR
18 BEFORE APRIL 1 OF EACH YEAR THEREAFTER, THE DEPARTMENT SHALL
19 COMPILE THE COMPLIANCE REPORTS AND AFFIRMATIONS RECEIVED
20 PURSUANT TO SUBSECTION (5) OF THIS SECTION. THE DEPARTMENT SHALL
21 SUBMIT AN ANNUAL REPORT BASED ON THIS INFORMATION TO THE
22 GENERAL ASSEMBLY, INCLUDING A LIST OF THOSE JURISDICTIONS THAT DID
23 NOT SUBMIT A COMPLIANCE REPORT OR AN AFFIRMATION OF COMPLIANCE.
24 NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11)(a)(I),
25 THE REQUIREMENT TO SUBMIT THE REPORT TO THE GENERAL ASSEMBLY
26 REQUIRED IN THIS SECTION CONTINUES THROUGH 2030.

27 **SECTION 3. Effective date.** This act takes effect July 1, 2019.

1 **SECTION 4. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.

4 **SECTION 5. Refer to people under referendum.** At the
5 election held on November 6, 2018, the secretary of state shall submit this
6 act by its ballot title to the registered electors of the state for their
7 approval or rejection. Each elector voting at the election may cast a vote
8 either "Yes/For" or "No/Against" on the following ballot title: "Shall
9 there be a prohibition on governmental jurisdictions in Colorado
10 obstructing federal immigration law enforcement, and, in connection
11 therewith, requiring such jurisdictions to affirm annually that they have
12 not violated federal immigration laws or been informed by any federal
13 agency that they are in violation of federal immigration laws?" Except as
14 otherwise provided in section 1-40-123, Colorado Revised Statutes, if a
15 majority of the electors voting on the ballot title vote "Yes/For", then the
16 act will become part of the Colorado Revised Statutes.