

2017-2018 #169

Colorado Secretary of State

Be it Enacted by the People of the State of Colorado.

SECTION 1. The short title of this act is the "Public Safety Protection against Sanctuary Policies Act".

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

PART 21

PROHIBITION ON SANCTUARY POLICIES IN VIOLATION OF FEDERAL LAW

24-33.5-2101. Legislative declaration. (1) THE PEOPLE OF COLORADO FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS PART 21 THROUGHOUT THE STATE AND THAT, THEREFORE, EXCEPT AS OTHERWISE SPECIFIED IN THIS PART 21, ADDRESSING SANCTUARY POLICIES AS OUTLINED IN THIS PART 21 IS A MATTER OF STATEWIDE CONCERN.

(2) THE PEOPLE OF COLORADO FIND AND DECLARE THAT:

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

(b) TO PROTECT THE SECURITY, SAFETY, AND WELL-BEING OF PERSONS WITHIN THE UNITED STATES, FEDERAL LAWS PROHIBIT STATE AND LOCAL GOVERNMENTS FROM RESTRICTING OR OBSTRUCTING THE EXCHANGE OF INFORMATION WITH FEDERAL AUTHORITIES, OR FROM PUNISHING PERSONS FOR COOPERATING OR EXCHANGING INFORMATION.

(c) STATE AND LOCAL GOVERNMENTS THAT VIOLATE FEDERAL IMMIGRATION LAWS RISK LOSING FEDERAL GRANTS OR ELIGIBILITY FOR FEDERAL GRANTS.

(d) IN FISCAL YEAR 2016, THE COLORADO STATE DEPARTMENT OF CORRECTIONS AND 33 COUNTY JAILS RECEIVED A TOTAL OF \$3,260,720 IN FEDERAL GRANTS FROM THE UNITED STATES DEPARTMENT OF JUSTICE "STATE CRIMINAL ALIEN ASSISTANCE PROGRAM" AS PARTIAL REIMBURSEMENT OF THE COSTS OF INCARCERATING 2,039 CRIMINAL ALIEN INMATES IN THE STATE CORRECTIONAL SYSTEM AND REIMBURSEMENT GRANTS FOR INCARCERATING AN ESTIMATED 6,000 TO 7,500 CRIMINAL ALIENS IN LOCAL JAILS, WITH SUCH GRANTS REPRESENTING LESS THAN 4% OF TRUE COSTS OF INCARCERATION IN THE STATE SYSTEM AND LESS THAN 10% OF TRUE COSTS IN COUNTY JAILS, RESULTING IN COSTS TO COLORADO TAXPAYERS AFTER FEDERAL REIMBURSEMENTS OF OVER \$75,000,000 ANNUALLY AND OVER \$11,000,000 ANNUALLY TO LOCAL TAXPAYERS OR A COMBINED TAXPAYER BURDEN OF OVER \$88,000,000 IN FISCAL YEAR 2016 AND A NET CUMULATIVE COLORADO TAXPAYER COST OF NEARLY \$1,000,000,000 SINCE THE INCEPTION OF THE FEDERAL GRANT REIMBURSEMENT PROGRAM IN 1995.

(e) FEDERAL LAW EXPRESSLY PROHIBITS THE PHYSICAL HARBORING OF PERSONS KNOWN TO BE UNLAWFULLY PRESENT IN THE UNITED STATES, SO IT IS INAPPROPRIATE AND CONTRARY TO THE PUBLIC SAFETY AND WELFARE FOR ANY STATE OR LOCAL GOVERNMENT TO ENCOURAGE, ENDORSE, OR IN ANY WAY SUPPORT ANY PUBLIC OR PRIVATE ORGANIZATION SEEKING TO OFFER SO-CALLED "SANCTUARY PROTECTION" TO PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES.

(f) UNITED STATES SUPREME COURT ASSOCIATE JUSTICE KENNEDY STATED IN THE MAJORITY OPINION IN *ARIZONA V. UNITED STATES*, 567 U.S. 387 (2012), THAT "THE SUPREMACY CLAUSE PROVIDES A CLEAR RULE THAT FEDERAL LAW 'SHALL BE THE SUPREME LAW OF THE LAND';

. . . UNDER THIS PRINCIPLE, CONGRESS HAS THE POWER TO PREEMPT STATE LAW . . . STATE LAWS ARE PREEMPTED WHEN THEY CONFLICT WITH FEDERAL LAW." [CITATIONS OMITTED]

(g) IN STRIKING DOWN THREE SECTIONS OF ARIZONA LAW CONCERNING ILLEGAL IMMIGRANTS BASED ON FEDERAL SUPREMACY, ASSOCIATE JUSTICE KENNEDY WRITING FOR THE COURT MAJORITY FURTHER FOUND, "THE FEDERAL POWER TO DETERMINE IMMIGRATION POLICY IS WELL SETTLED. IMMIGRATION POLICY CAN AFFECT TRADE, INVESTMENT, TOURISM, AND DIPLOMATIC RELATIONS FOR THE ENTIRE NATION, AS WELL AS THE PERCEPTIONS AND EXPECTATIONS OF ALIENS IN THIS COUNTRY WHO SEEK THE FULL PROTECTION OF ITS LAWS."

(h) ON MARCH 13, 2018, THE FIFTH CIRCUIT U. S. COURT OF APPEALS UPHELD AS CONSTITUTIONAL A TEXAS STATUTE PROHIBITING SANCTUARY POLICIES IN ANY CITY, COUNTY OR OTHER JURISDICTION OF THE STATE, AND NO REVERSAL OF THAT RULING IS LIKELY SINCE IT IS CONSISTENT WITH ALL PRIOR FEDERAL COURT RULINGS.

(3) THE PEOPLE OF COLORADO, THEREFORE, DECLARE THAT IT IS IN THE BEST INTERESTS OF COLORADO TO PROHIBIT ITS STATE AND LOCAL GOVERNMENTS FROM CREATING, ENFORCING OR ADMINISTERING POLICIES, ORDINANCES OR PRACTICES THAT OBSTRUCT, RESTRICT OR DISCOURAGE COMMUNICATION OR COOPERATION WITH ANY FEDERAL LAW ENFORCEMENT AGENCY INCLUDING FEDERAL IMMIGRATION AGENCIES AND PERSONNEL.

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

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

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

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

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

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

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

(II) MAINTAINING THE INFORMATION; OR

(III) EXCHANGING THE INFORMATION WITH ANY OTHER FEDERAL, STATE, OR POLITICAL SUBDIVISION OF THIS STATE; AND

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

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

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

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

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

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

(4) **Notice to officials, employees, and law enforcement officers.** THE GOVERNING BODY OF A JURISDICTION SHALL ANNUALLY PROVIDE WRITTEN NOTICE TO EACH ELECTED OFFICIAL, EMPLOYEE, AND LAW ENFORCEMENT OFFICER OF THE JURISDICTION OF HIS OR HER DUTY TO COMPLY WITH ALL FEDERAL LAWS RELATED TO IMMIGRATION, INCLUDING 8 U.S.C. SEC. 1373, 8 U.S.C. SEC. 1324, AND 8 U.S.C. SEC. 1644, AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

(5) **Compliance reports.** ON OR BEFORE JANUARY 10, 2020 AND ON OR BEFORE JANUARY 10 OF EACH YEAR THEREAFTER THROUGH JANUARY 10, 2025, THE GOVERNING BODY OF EACH MUNICIPAL OR COUNTY-CITY MUNICIPAL JURISDICTION HAVING A POPULATION OF AT LEAST TEN THOUSAND PEOPLE SHALL SUBMIT A WRITTEN REPORT AND AN AFFIRMATION OF COMPLIANCE TO THE DEPARTMENT THAT INDICATES THAT THE JURISDICTION:

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

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

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

(6) **Annual report.** ON OR BEFORE APRIL 1, 2020, AND ON OR BEFORE APRIL 1 OF EACH YEAR THEREAFTER THROUGH APRIL 1, 2025, THE DEPARTMENT SHALL COMPILE THE COMPLIANCE REPORTS AND AFFIRMATIONS RECEIVED PURSUANT TO SUBSECTION (5) OF THIS SECTION. THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT BASED ON THIS INFORMATION TO THE GENERAL ASSEMBLY, INCLUDING A LIST OF THOSE MUNICIPAL JURISDICTIONS THAT DID NOT SUBMIT A COMPLIANCE REPORT OR AN AFFIRMATION OF COMPLIANCE AS REQUIRED BY SECTION 5. NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11) (a) (I), THE REQUIREMENT TO SUBMIT THE REPORT TO THE GENERAL ASSEMBLY REQUIRED IN THIS SECTION CONTINUES THROUGH 2025.

(7) **Effective date.** IF ADOPTED BY ELECTORS ON NOVEMBER 6, 2018, THIS STATUTE SHALL TAKE EFFECT ON JULY 1, 2019.

