

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2008

BY DELEGATES LONGANACRE, CROUSE, FERRELL,
RIDENOUR, FAST, THORNE, KEATON, ROSS, MCGEEHAN,
MAZZOCCHI AND MARTIN

[Passed March 11, 2023; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto one new
2 article containing nine new sections, designated §15-15-1, §15-15-2, §15-15-3, §15-15-
3 4, §15-15-5, §15-15-6, §15-15-7, §15-15-8, and §15-15-9, all relating to prohibiting
4 subdivisions and local entities from adopting policies that prohibit or materially restrict
5 cooperation with federal entities enforcing immigration law; requiring state entities, local
6 entities and law enforcement agencies to cooperate with the enforcement of immigration
7 laws; providing for definitions; requiring that entities and agencies not prohibit the
8 enforcement of immigration laws or cooperation with other governmental agencies to
9 enforce immigration laws; providing for complaint procedures; providing for mandatory
10 duties regarding immigration detainees; providing for actions to ensure compliance;
11 providing that the failure to satisfy the duties imposed by this enactment constitutes
12 neglect of duty and malfeasance in office and exposes elected officials to removal from
13 office as provided by law; providing for mandatory agreements regarding the housing of
14 persons subject to immigration detainees; providing for the Attorney General to defend
15 good-faith compliance under certain circumstances; providing Whistle-Blower protections
16 to individuals who report violations; and prohibiting discrimination on the basis of protected
17 classes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 15. FEDERAL IMMIGRATION ENFORCEMENT.

§15-15-1. Definitions

1 (1) "Federal immigration agency" means the United States Department of Justice, the
2 United States Department of Homeland Security, any division within either of those departments,
3 specifically including but not limited to United States Immigration and Customs Enforcement,
4 United States Customs and Border Protection, any successor agency or agencies to the

5 aforesaid, and any other federal agency charged with the enforcement or administration of
6 immigration or border control.

7 (2) "Immigration law" means the laws of this state or federal law relating to immigrants or
8 immigration, including but not limited to the Federal Immigration and Nationality Act, 8 U.S.C. §
9 1101 *et seq.*

10 (3) "Immigration detainer" means a facially sufficient written or electronic request issued
11 by a federal immigration agency using that agency's official form to request that another law
12 enforcement agency detain a person based on probable cause to believe that the person to be
13 detained is a removable alien under federal immigration law, including detainers issued pursuant
14 to 8 U.S.C. § 1226 *et seq.* and 8 U.S.C. § 1357 *et seq.*, along with a warrant described in
15 paragraph (C) of this subsection. For purposes of this subsection, an immigration detainer is
16 deemed facially sufficient if:

17 (A) The federal immigration agency's official form is complete and indicates on its face
18 that the federal immigration official has probable cause to believe that the person to be detained
19 is a removable alien under federal immigration law; or

20 (B) The federal immigration agency's official form is incomplete and fails to indicate on its
21 face that the federal immigration official has probable cause to believe that the person to be
22 detained is a removable alien under federal immigration law, but is supported by an affidavit,
23 order, or other official documentation that indicates that the federal immigration agency has
24 probable cause to believe that the person to be detained is a removable alien under federal
25 immigration law; and

26 (C) The federal immigration agency supplies with its detention request a Form I-200
27 Warrant for Arrest of Alien, or a Form I-205 Warrant of Removal/Deportation, or a successor
28 warrant, or other warrant authorized by federal law.

29 (4) "Inmate" means a person in the custody of a law enforcement agency.

30 (5) "Law enforcement agency" for purposes of this article means an agency in this state
31 charged with enforcement of federal, state, county, or municipal laws or with managing custody
32 of persons in this state and includes, but is not limited to, municipal police departments,
33 sheriff's offices, county and state police departments, state college and university
34 police departments, county correctional agencies, and the Division of Corrections and
35 Rehabilitation.

36 (6) "Local entity" means:

37 (A) The governing body, and any agents or officers with executive, decision-making, or
38 policymaking authority thereof, of a municipality, county, or other political subdivision of this state,
39 and any subsidiary governmental bodies of those entities;

40 (B) An officer or employee of or a division, department, or other body that is part of a
41 municipality, county, political subdivision or other authority, including a sheriff, municipal police
42 department, municipal attorney, or county attorney; or

43 (C) A prosecuting attorney or assistant prosecuting attorney.

44 (7) "State entity" means the State of West Virginia or any agency, office, board, bureau,
45 commission, department, branch, division, or institution thereof, including institutions under the
46 authority of the West Virginia Higher Education Policy Commission, the Community and Technical
47 System, and all other public postsecondary educational institutions in the state. The term includes
48 any officer, employee or agent of any of the aforesaid.

§15-15-2. Prohibited policies regarding immigration enforcement.

1 A state entity, local entity, or law enforcement agency shall not adopt or maintain a law,
2 ordinance, resolution, rule, regulation, policy, directive, order, practice, or procedure, formal
3 or informal, written or unwritten, which prohibits or materially restricts the state entity, local entity,
4 or law enforcement agency from complying with or assisting in the enforcement of immigration
5 laws, including, but not limited to, prohibiting or materially restricting the state entity, local entity,
6 or law enforcement agency from prohibiting or otherwise materially restricting any state entity,

7 local entity, or law enforcement agency from assisting in the enforcement of immigration law. This
8 includes prohibitions or restrictions on:

9 (a) Inquiries into the immigration status of any person;

10 (b) Transmitting, requesting, or receiving information relating to immigration status, lawful
11 or unlawful, of any person to or from any federal immigration enforcement agency;

12 (c) Maintaining, archiving, or otherwise storing for subsequent use information relating to
13 an individual's immigration status;

14 (d) Exchanging information relating to immigration status with another local entity, state
15 entity, or a federal immigration agency;

16 (e) Complying with an immigration detainer, including, but not limited to, refusing to cooperate
17 or comply with a lawfully issued detainer in the absence of a warrant or other order directing
18 compliance with or enforcement of such a detainer;

19 (f) Complying with a request from a federal immigration agency to notify the agency before
20 the release of an inmate;

21 (g) Providing a federal immigration agency with an inmate's incarceration status or release
22 date;

23 (h) Assisting or cooperating with a federal immigration agency, including by providing
24 enforcement assistance;

25 (i) Participating in any program or agreement authorized under Section 287 of the federal
26 Immigration and Nationality Act, 8 U.S.C. § 1357 *et seq*;

27 (j) Permitting a federal immigration officer to enter and conduct enforcement activities at a
28 municipal jail, county jail, or Division of Corrections and Rehabilitation Facility involving or related
29 to the enforcement of federal immigration laws;

§15-15-3. Mandatory duties of law enforcement agencies regarding immigration detainer.

1 (a) A law enforcement agency that takes initial custody of a person subject to an
2 immigration detainer shall:

3 (1) Provide notice to the court authorized to grant or deny the person's release on bail or
4 bond that the person is subject to an immigration detainer;

5 (2) Record in the person's case file that the person is subject to an immigration
6 detainer; and

7 (3) Upon determining that the immigration detainer is facially sufficient as defined by §15-
8 15-1 of this code, comply with the requests made in the immigration detainer to the extent required
9 by law.

10 (b) A law enforcement agency is not required to perform a duty imposed by subsection
11 (a) of this section with respect to a person who has been transferred to the custody of the
12 agency by another law enforcement agency subject to the requirements of this section.

13 (c) A court of competent jurisdiction which receives notice that a person is subject to an
14 immigration detainer shall cause the fact to be recorded in the court record, regardless of whether
15 the notice is received before or after a judgment in the case.

§15-15-4. Mandatory agreements for housing persons subject to immigration detainers.

1 (a) Each county jail or municipal jail, to the extent the same may exist, and the Division of
2 Corrections and Rehabilitation shall enter into an agreement or agreements with a federal
3 immigration agency for temporarily housing persons who are the subject of immigration detainers
4 and for the payment of the costs of housing and detaining those persons.

5 (b) A compliant agreement under this section includes any contract with a federal
6 immigration agency for housing or detaining persons subject to immigration detainers, such as
7 basic ordering agreements, intergovernmental service agreements, agreements authorized by
8 Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. § 1357 *et seq*, successor
9 agreements, or other similar agreements authorized by federal law.

§15-15-5. Complaint procedure; notice; equitable relief.

1 (a) Any person, including a federal agency, may file a complaint with the Attorney General
2 alleging that a state entity, local entity, or law enforcement agency has violated or is violating this

3 article. The person shall include with the complaint any evidence the person has in support of the
4 complaint.

5 (b) A state entity, local entity, or law enforcement agency for which the Attorney General
6 has received a complaint pursuant to this section shall comply with any document requests,
7 including a request for supporting documents, from the Attorney General relating to the complaint.

8 (c) If the Attorney General determines there is sufficient evidence that a local entity or law
9 enforcement agency has violated or is violating the provisions of this article, the Attorney General
10 may file a petition for declaratory or injunctive relief, mandamus, or other appropriate relief in
11 Circuit Court for Kanawha County, or in the Circuit Court for a county in which the principal office
12 of the entity or agency is located, against the entity or agency suspected of violating this article.

13 (d) If a court finds a state entity, local entity, or law enforcement agency has violated or is
14 violating this article, the court shall enjoin the violation. The court shall have continuing jurisdiction
15 over the parties and subject matter and may enforce its orders with contempt proceedings as
16 provided by law.

17 (e) An order approving a consent decree or granting any relief under this section shall
18 include written findings of fact that describe with specificity the existence and nature of the
19 violation.

20 (f) In an appeal related to a suit brought under this section, the appellate court shall
21 render its final order or judgment with the least possible delay.

**§15-15-6. Removal from office for malfeasance, neglect of duty, and failure to faithfully
discharge duties of office.**

1 Any elected official who takes official action that results in a law, ordinance, resolution,
2 rule, regulation, policy, directive, order, practice, or procedure to come into or continue in effect
3 that violates the provisions of this article has failed to faithfully execute the duties of his or her
4 office, has acted with neglect of duty, and has engaged in malfeasance in office, and thus may

5 be removed from the same in accordance with Article IV, §6 of the constitution of this state, §6-
6 6-5 of this code, §6-6-7 of this code, or any other applicable provision of the law of this state.

§15-15-7. Attorney General to defend good-faith compliance upon request.

1 (a) The Attorney General may defend a local entity or law enforcement agency in any
2 action in any court if:

3 (1) The executive head or governing body, as applicable, of the local entity or law
4 enforcement agency requests the Attorney General 's assistance in the defense; and

5 (2) The Attorney General determines that the local entity or law enforcement agency that
6 is the subject of the suit has made a good-faith effort to comply with this article.

§15-15-8. Report of violations; whistle-blower protections.

1 (a) A state entity, local entity, or law enforcement agency shall not discharge, threaten, or
2 otherwise discriminate or retaliate against any official, representative, agent, or employee for
3 reporting a known or probable violation of the provisions of this article to the Attorney General.

4 (b) All provisions of §6C-1-1 *et seq.* of this code, the Whistle-Blower Law, shall apply to
5 an official, representative, agent, or employee of a state entity, local entity, or law enforcement
6 agency who is discharged, threatened, or otherwise discriminated or retaliated against because
7 he or she reported a known or probable violation of the provisions of this article to the Attorney
8 General.

§15-15-9. Implementation; discrimination prohibited.

1 (a) This article code shall be implemented in a manner consistent with federal laws
2 and regulations governing immigration, protecting the civil rights of all persons, and respecting the
3 privileges and immunities of United States citizens.

4 (b) A state entity, local entity, or law enforcement agency, or a person employed by or
5 otherwise under the direction or control of a state entity, local entity, or law enforcement agency,
6 shall not base its actions under this article on the gender, race, color, religion, language, national

- 7 origin, or physical disability of a person except to the extent authorized by the United States
- 8 Constitution, the constitution and laws of this state, or other applicable federal law.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2023.

.....
Governor