

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2008

By Delegates Longanacre, Crouse, Ferrell, Ridenour,
Fast, Thorne, Keaton, Ross, McGeehan, Mazzocchi
and Martin

[Introduced January 12, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15-15-1, §15-15-2, §15-15-3, §15-15-4, §15-15-5, §15-15-6, §15-15-7, §15-
3 15-8, §15-15-9, §15-15-10, and §15-15-11, all relating to requiring state entities, local
4 entities and law enforcement agencies to cooperate with the enforcement of immigration
5 laws; providing for definitions; requiring that entities and agencies not prohibit the
6 enforcement of immigration laws or cooperation with other governmental agencies to
7 enforce immigration laws; providing for complaint procedures; providing for mandatory
8 duties regarding immigration detainees; providing for actions to ensure compliance;
9 providing for ineligibility for state funds; providing for rulemaking authority for the State
10 Auditor; providing for mandatory agreements; providing for the Attorney General to defend
11 good-faith compliance under certain circumstances; providing for a civil cause of action for
12 damages; providing for a duty to report and Whistle-Blower protections; providing for
13 prohibiting discrimination; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FEDERAL IMMIGRATION ENFORCEMENT

§15-15-1. Definitions.

1 (a) "Federal immigration agency" means the United States Department of Justice and
2 the United States Department of Homeland Security, a division within such an agency, including
3 United States Immigration and Customs Enforcement and United States Customs and Border
4 Protection, any successor agency, and any other federal agency charged with the enforcement of
5 immigration law.

6 (b) "Immigration law" means the laws of this state or federal law relating to immigrants or
7 immigration, including the Federal Immigration and Nationality Act 8 U.S.C. § 1101 et seq.

8 (c) "Immigration detainer" means a facially sufficient written or electronic request issued by
9 a federal immigration agency using that agency's official form to request that another law
10 enforcement agency detain a person based on probable cause to believe that the person to be

11 detained is a removable alien under federal immigration law, including detainers issued pursuant
12 to 8 U.S.C. Sections 1226 and 1357 along with a warrant described in paragraph (2) of this
13 subsection. For purposes of this subsection, an immigration detainer is deemed facially sufficient
14 if:

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

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

24 (2) The federal immigration agency supplies with its detention request a Form I-
25 200 Warrant for Arrest of Alien or a Form I-205 Warrant of Removal/Deportation or a successor
26 warrant or other warrant authorized by federal law.

27 (d) "Inmate" means a person in the custody of a law enforcement agency.

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

34 (f) "Local entity" means:

35 (1) The governing body of a municipality, county, or other authority, subject to the laws of
36 this state;

37 (2) An officer or employee of or a division, department, or other body that is part of a
38 municipality, county, other authority, including a sheriff, municipal police department, municipal
39 attorney, or county attorney; or

40 (3) A prosecuting attorney or assistant prosecuting attorney.

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

§15-15-2. 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, procedure, or custom,
3 formal or informal, written or unwritten, which prohibits or materially restricts the state entity, local
4 entity, or law enforcement agency from enforcing immigration laws, including but not limited to
5 prohibiting or materially restricting the state entity, local entity, or law enforcement agency from:

6 (1) Inquiring into the immigration status of any person;

7 (2) With respect to information relating to the immigration status, lawful or unlawful, of any
8 person:

9 (A) Sending the information to or requesting or receiving the information from United
10 States Citizenship and Immigration Services or United States Immigration and Customs
11 Enforcement, including information regarding a person's place of birth;

12 (B) Maintaining the information; or

13 (C) Exchanging the information with another local entity, a state entity, or a federal
14 immigration agency;

15 (3) Complying with an immigration detainer, including, but not limited to, by requiring a
16 judicial warrant or other judicial order prior to complying with an immigration detainer.

17 (4) Complying with a request from a federal immigration agency to notify the agency before
18 the release of an inmate.

19 (5) Providing a federal immigration agency with an inmate's incarceration status or release
20 date.

21 (6) Assisting or cooperating with a federal immigration agency, including by providing
22 enforcement assistance;

23 (7) Participating in any program or agreement authorized under Section 287 of the federal
24 Immigration and Nationality Act, 8 U.S.C. Section 1357.

25 (8) Permitting a federal immigration officer to enter and conduct enforcement activities at a
26 municipal jail, county jail, or Division of Corrections and Rehabilitation Facility to enforce federal
27 immigration laws.

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

1 (a) A law enforcement agency that has 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(c) of this code, comply with the requests made in the immigration detainer to the extent
9 required 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 is transferred to the custody of the agency by
12 another law enforcement agency if the transferring agency performed that duty before the transfer.

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. Section 1357, or 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 if the person offers evidence to support such an allegation. The person shall include with
4 the complaint any evidence the person has in support of the 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 that a complaint filed against a state entity, local
9 entity, or law enforcement agency is facially sufficient, the Attorney General may file a petition for
10 declaratory or injunctive relief, mandamus, or other appropriate relief in Circuit Court for Kanawha
11 County or in the Circuit Court for a county in which the principal office of the entity or agency is
12 located to compel the entity or agency that is suspected of violating this article to comply.

13 (d) If a court finds a state entity, local entity, or law enforcement agency has violated this
14 article, the court shall immediately 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 of a suit brought under this section, the appellate court shall render its final
21 order or judgment with the least possible delay.

§15-15-6. Denial of state funds; rule-making authority.

1 (a) A state entity, local entity or law enforcement agency may not receive state funds if the
2 entity adopts or maintains a policy in violation of this article and does not come into compliance
3 with this article within 90 days of receiving notice.

4 (b) State funds for a state entity, local entity, or law enforcement agency shall be denied for
5 the state fiscal year following the year in which a final judicial determination in an action brought
6 under §15-15-5 of this code is made that the entity has intentionally violated this article.

7 (c) The State Auditor shall adopt rules to implement this section among state agencies
8 from which state funds are distributed to a municipality or county pursuant to §29A-3-1 et seq. of
9 this code.

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

1 (a) The Attorney General shall 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 cause of action arises out of a claim involving
6 the local entity's or law enforcement agency's good-faith compliance with this article.

7 (b) If the Attorney General defends a local entity or law enforcement agency under this
8 Code section, the state shall be liable for the expenses, costs, judgment, or settlement of the
9 claims arising out of the representation. The Attorney General may settle or compromise any and
10 all such claims.

11 (c) The state shall not be liable for any expenses, costs, judgments, or settlements of
12 any claims against a local entity or law enforcement agency that is not represented by the Attorney
13 General under this section.

§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 §15-15-2 of this code to the Attorney
4 General.

5 (b) All provisions of §6C-1-1 et seq. of this code, the Whistle-Blower Law, shall apply to an
6 official, representative, agent, or employee of a state entity, local entity, or law enforcement
7 agency who is discharged, threatened, or otherwise discriminated or retaliated against because
8 he or she reported a known or probable violation of the provisions of §15-15-2 of this code to the
9 Attorney General.

§15-15-9. Civil cause of action for damages.

1 (a) A person injured by the tortious acts or omissions of a person unlawfully present in
2 the United States, or the personal representative of a person killed by the tortious acts
3 or omissions of a person unlawfully present in the United States, shall have a cause of action for
4 damages against a state entity, local entity, or law enforcement agency upon proof by the
5 preponderance of the evidence of:

6 (1) The existence of a policy in violation of this article by such state entity, local entity, or
7 law enforcement agency; and

8 (2) A failure to comply with this article resulting in such person having access to the person
9 injured or killed when the tortious acts or omissions occurred.

10 (b) Sovereign immunity of state entities, local entities, or law enforcement agencies is
11 expressly waived to the extent of liability created by this section.

12 (c) Trial by jury is a matter of right in an action brought under this section.

13 (d) The court in an action brought under this section may award reasonable costs
14 and attorneys' fees to the prevailing party.

§15-15-10. Implementation: discrimination prohibited.

1 (a) This article 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 of the State of West Virginia, or federal law.

§15-15-11. Severability.

1 The provisions of this article are severable and accordingly, if any part of this article is
2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
3 of the remaining provisions of this article.

NOTE: The purpose of this bill is to clarify federal immigration enforcement in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.