

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2808

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HANNA, PORTERFIELD, BIBBY, HARDY, FOSTER, WAXMAN
AND PACK

[Introduced February 1, 2019; Referred
to the Committee on Political Subdivisions then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §7-28-1, §7-28-2, §7-28-3, §7-28-4, §7-28-5, §7-28-6, and §7-28-7, all relating
3 to requiring local entities to enforce immigration laws; providing for definitions; providing
4 for applicability; requiring that a local entity not prohibit the enforcement of immigration
5 laws or the cooperation with other governmental agencies to enforce immigration laws;
6 prohibiting discrimination; providing for a complaint procedures; providing for notice of
7 noncompliance to the local entity; providing for actions to ensure compliance; providing
8 for the denial of state funds to local entities in a final judicial determination; providing for
9 exceptions under certain circumstances; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS.

§7-28-1. Definitions.

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

3 (b) "Lawful detention" means the detention of an individual by a local entity for the
4 investigation of a criminal offense. The term excludes a detention if the sole reason for the
5 detention is that the individual:

6 (1) Is a victim of or witness to a criminal offense; or

7 (2) Is reporting a criminal offense.

8 (c) "Local entity" means:

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

11 (2) An officer or employee of or a division, department, or other body that is part of a
12 municipality, county, other authority, including a sheriff, municipal police department, municipal
13 attorney, or county attorney; and

14 (3) A district attorney or criminal district attorney.

§7-28-2. Applicability.

1 (a) This article does not apply to a school district or open-enrollment charter school. This
2 article does not apply to the release of information contained in education records of an
3 educational agency or institution, except in conformity with the Family Education Rights and
4 Privacy Act of 1974, 20 U.S.C. § 1232g et seq.

5 (b) This article does not apply to any health care services to the extent that the health care
6 service is providing access to or delivering medical or health care services as required under the
7 following applicable state and federal laws:

8 (1) 42 U.S.C. § 1395dd;

9 (2) 42 U.S.C. § 1396b (v);

10 (3) Chapter 16 of this code; or

11 (4) Any other provision of this code or federal law that requires provision of health care
12 services to citizens of this state.

13 (c) Subsection (b) does not exclude the application of this article to a commissioned peace
14 officer employed by or commissioned by a hospital or other health care provider.

§7-28-3. Local government policy regarding immigration enforcement.

1 (a) A local entity shall not adopt an ordinance, resolution, rule, regulation, or policy which
2 prohibits the entity from enforcing immigration laws.

3 (b) A local entity shall not prohibit a person who is employed as a police officer for a
4 municipality pursuant to §8-14-1 et seq. of this code, a corrections officer, a booking clerk, a
5 magistrate, or a district attorney, criminal district attorney, or other prosecuting attorney, and who
6 is otherwise under the control of the entity from:

7 (1) Inquiring into the immigration status of a person under a lawful detention or under
8 arrest;

9 (2) With respect to information relating to the immigration status, lawful or unlawful, of any
10 person under a lawful detention or under arrest:

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

14 (B) Maintaining the information; or

15 (C) Exchanging the information with another local entity, a state government entity, or a
 16 federal government entity;

17 (3) Assisting or cooperating with a federal immigration officer as reasonable and
 18 necessary, including providing enforcement assistance; or

19 (4) Permitting a federal immigration officer to enter and conduct enforcement activities at
 20 a municipal or county jail to enforce federal immigration laws.

§7-28-4. Discrimination prohibited.

1 A local entity or a person employed by or otherwise under the direction or control of the
 2 entity may not consider race, color, language, or national origin while enforcing immigration laws
 3 except to the extent permitted by the United States Constitution or the West Virginia Constitution.

§7-28-5. Complaint procedure; notice; equitable relief.

1 (a) Any citizen residing in the jurisdiction of a local entity may file a complaint with the
 2 Attorney General if the citizen offers evidence to support an allegation that the local entity has
 3 adopted an ordinance, resolution, rule, regulation, or policy that prohibits the enforcement of
 4 immigration laws. The citizen must include evidence of the ordinance, resolution, rule, regulation,
 5 policy when filing the complaint.

6 (b) If the Attorney General determines that a complaint against a local entity is valid, the
 7 Attorney General shall, not more than the 10th day after the date of the determination, provide
 8 written notice to the entity that:

9 (1) The complaint has been filed;

10 (2) The Attorney General has determined that the complaint is valid;

11 (3) The Attorney General is authorized to file an action to enjoin the violation if the entity

12 does not come into compliance with the requirements of this article within 90 days after the date
13 notice is provided; and

14 (4) The entity will be denied state funds the state fiscal year following the year in which a
15 final judicial determination in an action brought under subsection (c) of this section.

16 (c) If the Attorney General determines that a compliant filed under subsection (a) of this
17 section is valid and the local entity does not come into compliance after receiving notice in
18 subsection (b) of this section, the Attorney General may file a petition for a writ of mandamus or
19 apply for other appropriate equitable relief in a circuit court in Kanawha County to compel the
20 entity that adopts an ordinance, resolution, rule, regulation, or policy prohibiting enforcement of
21 immigration laws to comply with this article.

22 (d) An appeal of a suit brought under subsection (c) of this section is permitted to the West
23 Virginia Supreme Court of Appeals. The court shall render its final judgment or opinion with the
24 least possible delay.

§7-28-6. Denial of state funds; rule-making authority; exceptions.

1 (a) A local entity may not receive state funds if the entity adopts an ordinance, resolution,
2 rule, regulation, or policy prohibiting the entity from enforcing immigration laws and does not come
3 into compliance with §7-28-5 of this code within 90 days of receiving notice.

4 (b) State funds for a local entity shall be denied for the state fiscal year following the year
5 in which a final judicial determination in an action brought under §7-28-5(c) of this code is made
6 that the entity has intentionally prohibited the enforcement of immigration laws.

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 §29B-3-1 of this
9 code.

10 (d) A local entity may that has not violated this article may not be denied state funds,
11 regardless of whether the entity is a part of another entity that is in violation of this article.

§7-28-7. 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 require all local entities of this state to enforce immigration laws. The bill provides for a complaint procedure and notice provided to the entity out of compliance with this article. The bill establishes actions to be taken against a local entity if the entity does not come into compliance within 90 days of receiving notice. The bill permits the denial of funds resulting from any final judicial determination a local entity violated this article. The bill establishes rule-making authority with the State Auditor in regard to the denial of state funds.

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