

1 SB108
2 197245-1
3 By Senator Orr
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 04-FEB-20

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8 SYNOPSIS: Under existing law, this state is prohibited
9 from adopting a policy or practice that limits or
10 restricts the enforcement of federal immigration
11 laws.

12 This bill would make it a crime for any
13 public official or agency of the state or any of
14 its municipalities or counties to intentionally
15 adopt a policy or practice that limits or restricts
16 the enforcement of federal immigration laws or that
17 restricts its officers in the enforcement of state
18 law, and would provide penalties.

19 Amendment 621 of the Constitution of Alabama
20 of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of
22 Alabama of 1901, as amended, prohibits a general
23 law whose purpose or effect would be to require a
24 new or increased expenditure of local funds from
25 becoming effective with regard to a local
26 governmental entity without enactment by a 2/3 vote
27 unless: it comes within one of a number of

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

5 The purpose or effect of this bill would be
6 to require a new or increased expenditure of local
7 funds within the meaning of the amendment. However,
8 the bill does not require approval of a local
9 governmental entity or enactment by a 2/3 vote to
10 become effective because it comes within one of the
11 specified exceptions contained in the amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to immigration; to amend Section 31-13-5,
18 Code of Alabama 1975, to provide that no public official or
19 agency of the state or any of its municipalities or counties
20 shall intentionally adopt a policy or practice that limits or
21 restricts the enforcement of federal immigration laws or that
22 restricts its officers in the enforcement of state law; to
23 provide that a violation is a Class C felony; to provide other
24 penalties; and in connection therewith would have as its
25 purpose or effect the requirement of a new or increased
26 expenditure of local funds within the meaning of Amendment 621
27 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official Recompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 31-13-5, Code of Alabama 1975, is
5 amended to read as follows:

6 "§31-13-5.

7 "(a) (1) It is the policy of this state to discharge
8 illegal immigration by complying with all federal immigration
9 laws and assisting and fully cooperating with federal
10 immigration authorities in the enforcement of federal
11 immigration laws.

12 "(2) No Neither this state nor any official or
13 agency of this state or nor any political subdivision thereof,
14 including, but not limited to, an officer of a court of this
15 state, may adopt a policy or practice that limits or restricts
16 the enforcement of federal immigration laws by limiting
17 communication between its officers and federal immigration
18 officials in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644,
19 or that restricts its officers in the enforcement of this
20 chapter. If, in the judgment of the Attorney General of
21 Alabama, an official or agency of this state or any political
22 subdivision thereof, including, but not limited to, an officer
23 of a court in this state, is in violation of this subsection,
24 the Attorney General shall report any violation of this
25 subsection to the Governor and the state Comptroller and that
26 agency or political subdivision shall not be eligible to
27 receive any funds, grants, or appropriations from the State of

1 Alabama until such violation has ceased and the Attorney
2 General has so certified. Any appeal of the determination of
3 the Attorney General as considered in this section shall be
4 first appealed to the circuit court of the respective
5 jurisdiction in which the alleged offending agency resides.

6 "(3) Any intentional violation of this subsection
7 shall be a Class C felony.

8 "(b) All state, municipal, and county officials,
9 agencies, and personnel, including, but not limited to, an
10 officer of a court of this state, shall fully comply with and,
11 to the full extent permitted by law, support the enforcement
12 of federal law prohibiting the entry into, presence, or
13 residence in the United States of aliens in violation of
14 federal immigration law.

15 "(c) Except as provided by federal law, officials or
16 agencies of this state, or any political subdivision thereof,
17 including, but not limited to, an officer of a court of this
18 state, may not be prohibited or in any way be restricted from
19 sending, receiving, or maintaining information relating to the
20 immigration status, lawful or unlawful, of any individual or
21 exchanging that information with any other federal, state, or
22 local governmental entity for any of the following official
23 purposes:

24 "(1) Determining the eligibility for any public
25 benefit, service, or license provided by any state, local, or
26 other political subdivision of this state.

1 "(2) Verifying any claim of residence or domicile if
2 determination of residence or domicile is required under the
3 laws of this state or a judicial order issued pursuant to a
4 civil or criminal proceeding of this state.

5 "(3) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. §
6 1644.

7 "(d) A person who is a United States citizen or an
8 alien who is lawfully present in the United States and is a
9 resident of this state may file a petition with the
10 appropriate local district attorney or the Attorney General
11 requesting that he or she bring an action in circuit court to
12 challenge any official or head of an agency of this state or
13 political subdivision thereof, including, but not limited to,
14 an officer of a court in this state, that adopts or implements
15 a policy or practice that is in violation of 8 U.S.C. § 1373
16 or 8 U.S.C. § 1644. If the district attorney or the Attorney
17 General elects to not bring an action, he or she shall
18 publicly state in writing the justification for such a
19 decision. A district attorney or the Attorney General must
20 either bring an action or publicly state why no action was
21 brought within 90 days of receiving a petition. The petition
22 must be signed under oath and under penalty of perjury, and
23 must allege with specificity any alleged violations. The
24 district attorney or the Attorney General shall give the
25 official or head of an agency, including, but not limited to,
26 an officer of a court of this state, 30 days' notice of his or
27 her intent to file such an action. If there is a judicial

1 finding that an official or head of an agency, including, but
2 not limited to, an officer of a court in this state, has
3 violated this section, the court shall order that the officer,
4 official, or head of an agency pay a civil penalty of not less
5 than one thousand dollars (\$1,000) and not more than five
6 thousand dollars (\$5,000) for each day that the policy or
7 practice has remained in effect after the filing of an action
8 pursuant to this section.

9 "(e) A court shall collect the civil penalty
10 prescribed in subsection (d) and remit one half of the civil
11 penalty to the Alabama Department of Homeland Security and the
12 second half shall be remitted to the Alabama State Law
13 Enforcement Agency.

14 "(f) Every person working for the State of Alabama
15 or a political subdivision thereof, including, but not limited
16 to, a law enforcement agency in the State of Alabama or a
17 political subdivision thereof, shall have a duty to report
18 violations of this section of which the person has knowledge.
19 Any person who willfully fails to report any violation of this
20 section when the person knows that this section is being
21 violated shall be guilty of obstructing governmental
22 operations as defined in Section 13A-10-2.

23 "(g) For the purposes of this section, the term
24 official or head of an agency of this state shall not include
25 a law enforcement officer or personnel employed in a jail
26 acting within the line and scope of his or her duty, except

1 for a sheriff, a chief of police, or the head of any law
2 enforcement agency.

3 "(h) For the purposes of this section, any
4 proceedings against an official shall be only in his or her
5 official capacity. For the purposes of this section, the
6 relevant statute of repose for assessing penalties shall be no
7 more than 30 days prior to the initial allegation of the
8 violations of this section.

9 "(i) For the purposes of this section, the term
10 "officer of the court" shall not be interpreted to interfere
11 with the relationship between an attorney and his or her
12 client."

13 Section 2. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended, because the
19 bill defines a new crime or amends the definition of an
20 existing crime.

21 Section 3. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.