

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 76

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO IMMIGRATION; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A  
2 NEW CHAPTER 59, TITLE 19, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE  
3 ENFORCEMENT OF FEDERAL IMMIGRATION LAW IN CERTAIN INSTANCES, TO PRO-  
4 VIDE THAT CERTAIN PERSONS SHALL HAVE DUTIES RELATED TO CERTAIN ARRESTED  
5 PERSONS, TO PROVIDE THAT CERTAIN PERSONS SHALL HAVE DUTIES RELATED TO  
6 AN IMMIGRATION DETAINER, TO PROVIDE APPLICABILITY, TO PROVIDE CERTAIN  
7 REQUIREMENTS FOR A LOCAL GOVERNMENT POLICY REGARDING IMMIGRATION EN-  
8 FORCEMENT, TO PROVIDE PROCEDURES FOR FILING A COMPLAINT, TO PROVIDE FOR  
9 RELIEF AVAILABLE, TO AUTHORIZE THE DENIAL OF SALES TAX DISTRIBUTION  
10 FUNDS IN CERTAIN INSTANCES AND TO PROVIDE FOR ENACTMENT; PROVIDING SEV-  
11 ERABILITY; AND DECLARING AN EMERGENCY.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Title 19, Idaho Code, be, and the same is hereby amended  
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
16 ter 59, Title 19, Idaho Code, and to read as follows:

17 CHAPTER 59

18 COMPLIANCE WITH IMMIGRATION LAW

19 19-5901. DEFINITIONS. As used in this chapter:

20 (1) "Employee" means an officer, board member, commissioner, execu-  
21 tive, employee or servant of a governmental entity, including elected or  
22 appointed officials, and persons acting on behalf of the governmental en-  
23 tity in any official capacity, temporarily or permanently in the service of  
24 the governmental entity, whether with or without compensation. "Employee"  
25 shall not mean a person or other legal entity while acting in the capacity of  
26 an independent contractor under contract to the governmental entity to which  
27 this act applies in the event of a claim.

28 (2) "Governmental entity" means and includes the state and political  
29 subdivisions as herein defined.

30 (3) "Immigration detainer" means a United States department of home-  
31 land security form I-247 or a similar or successor form that requests a gov-  
32 ernmental entity to maintain temporary custody of an alien for the federal  
33 government.

34 (4) "Immigration laws" means the laws of this state or federal law re-  
35 lating to immigrants or immigration, including the federal immigration and  
36 nationality act, 8 U.S.C. 1101 et seq.

37 (5) "Lawful detention" means the detention of an individual by a gov-  
38 ernmental entity for the investigation of a criminal offense. The term ex-  
39 cludes a detention if the sole reason for the detention is that the individ-  
40 ual:

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

1 (b) Is reporting a criminal offense.

2 (6) "Peace officer" means any employee of a police or law enforcement  
3 agency that is a part of, or administered by, the state or any political sub-  
4 division thereof and whose duties include and primarily consist of the pre-  
5 vention and detection of crime and the enforcement of penal, traffic or high-  
6 way laws of this state or any political subdivision. "Peace officer" also  
7 means an employee of a police or law enforcement agency of a federally recog-  
8 nized Indian tribe who has satisfactorily completed the peace officer stan-  
9 dards and training academy and has been deputized by a sheriff of a county or  
10 a chief of police of a city of the state of Idaho.

11 (7) "Policy" includes a formal, written rule, order, ordinance or pol-  
12 icy and an informal, unwritten policy.

13 (8) "Political subdivision" means any county, city, municipal corpora-  
14 tion, health district, school district, irrigation district, an operating  
15 agent of irrigation districts whose board consists of directors of its mem-  
16 ber districts, special improvement or taxing district, or any other polit-  
17 ical subdivision or public corporation. As used in this act, "county" and  
18 "city" also mean state-licensed hospitals and attached nursing homes estab-  
19 lished by counties pursuant to chapter 36, title 31, Idaho Code, or jointly  
20 by cities and counties pursuant to chapter 37, title 31, Idaho Code.

21 (9) "State" means the state of Idaho or any office, department, agency,  
22 authority, commission, board, institution, hospital, college, university  
23 or other instrumentality thereof.

24 (10) "Undocumented person" means a person who is not a United States  
25 citizen and does not have a legal right to be or remain in the United States.

26 19-5902. ENFORCEMENT OF FEDERAL IMMIGRATION LAW. (1) A peace officer  
27 may not stop a motor vehicle or conduct a search of a business or residence  
28 solely to enforce a federal law relating to immigrants or immigration, in-  
29 cluding the federal immigration and nationality act, 8 U.S.C. 1101 et seq.,  
30 unless the officer is acting:

31 (a) At the request of, and providing assistance to, an appropriate fed-  
32 eral law enforcement officer; or

33 (b) Under the terms of an agreement between the law enforcement agency  
34 employing the officer and the federal government under which the agency  
35 receives delegated authority to enforce federal law relating to immi-  
36 grants or immigration.

37 (2) A peace officer may arrest an undocumented person only if the of-  
38 ficer is acting under the authority granted under other applicable state or  
39 federal law.

40 (3) The legislature recognizes that it may be the practice or policy of  
41 certain peace officers and government entities to issue a misdemeanor cita-  
42 tion in lieu of formal arrest for certain violations. Nothing in this chap-  
43 ter should be construed to mandate, authorize or prohibit a different de-  
44 partment policy for undocumented persons than for legal residents and citi-  
45 zens.

46 19-5903. DUTIES RELATED TO CERTAIN ARRESTED PERSONS. (1) If a person  
47 is arrested and is unable to provide proof of the person's lawful presence in  
48 the United States, no later than forty-eight (48) hours after the person is

1 arrested and before the person is released on bond, a law enforcement agency  
2 performing the booking process shall:

3 (a) Review any information available from the federal priority en-  
4 forcement program operated by the United States immigration and customs  
5 enforcement or a successor program; and

6 (b) If information obtained under paragraph (a) of this subsection re-  
7 veals that the person is not a citizen or national of the United States  
8 and is unlawfully present in the United States according to the terms of  
9 the federal immigration and nationality act, 8 U.S.C. 1101 et seq.:

10 (i) Provide notice of that fact to the judge or magistrate autho-  
11 rized to grant or deny the person's release on bail; and

12 (ii) Record that fact in the person's case file.

13 (2) A law enforcement agency is not required to perform a duty imposed  
14 by subsection (1) (a) of this section with respect to a person who is trans-  
15 ferred to the custody of the agency by another law enforcement agency if the  
16 transferring agency performed that duty before transferring custody of the  
17 person.

18 (3) A judge or magistrate who receives notice of a person's immigration  
19 status under this section shall record that status in the court record.

20 19-5904. DUTIES RELATED TO IMMIGRATION DETAINER. (1) A law enforce-  
21 ment agency that has custody of a person subject to an immigration detainer  
22 issued by United States immigration and customs enforcement shall:

23 (a) Provide to the judge or magistrate authorized to grant or deny the  
24 person's release on bail under chapter 29, title 19, Idaho Code, notice  
25 that the person is subject to an immigration detainer;

26 (b) Record in the person's case file that the person is subject to an  
27 immigration detainer; and

28 (c) Comply with, honor and fulfill the requests made in the detainer.

29 (2) A law enforcement agency is not required to perform a duty imposed  
30 by subsection (1) (a) or (b) of this section with respect to a person who is  
31 transferred to the custody of the agency by another law enforcement agency if  
32 the transferring agency performed that duty before transferring custody of  
33 the person.

34 (3) A judge or magistrate who receives notice that a person is subject  
35 to a detainer under the provisions of this section shall record that fact in  
36 the court record, regardless of whether the notice is received before or af-  
37 ter a judgment in the case.

38 19-5905. APPLICABILITY. (1) The provisions of this chapter shall not  
39 apply to a school district or open-enrollment charter school. The provi-  
40 sions of this chapter shall not apply to the release of information contained  
41 in education records of an educational agency or institution, except in con-  
42 formity with the family educational rights and privacy act of 1974, 20 U.S.C.  
43 1232g.

44 (2) The provisions of this chapter shall not apply to a hospital or hos-  
45 pital district to the extent that the hospital or hospital district is pro-  
46 viding access to or delivering medical or health care services as required  
47 under applicable federal or state law.

1 19-5906. LOCAL GOVERNMENT POLICY REGARDING IMMIGRATION ENFORCE-  
2 MENT. (1) A governmental entity shall not adopt, enforce or endorse a policy  
3 under which the entity prohibits or discourages the enforcement of immigra-  
4 tion laws.

5 (2) In compliance with subsection (1) of this section, a governmental  
6 entity shall not prohibit or discourage a person who is a commissioned peace  
7 officer, a corrections officer, a booking clerk, a magistrate or prosecuting  
8 attorney, and who is employed by or otherwise under the direction or control  
9 of the entity, from doing any of the following:

10 (a) Inquiring into the immigration status of a person under a lawful de-  
11 tention or under arrest;

12 (b) With respect to information relating to the immigration status,  
13 lawful or unlawful, of any person under a lawful detention or under ar-  
14 rest:

15 (i) Sending the information to, or requesting or receiving the  
16 information from, United States citizenship and immigration ser-  
17 vices or United States immigration and customs enforcement, in-  
18 cluding information regarding a person's place of birth;

19 (ii) Maintaining the information; or

20 (iii) Exchanging the information with another governmental entity  
21 or a federal or state governmental entity;

22 (c) Assisting or cooperating with a federal immigration officer as rea-  
23 sonable or necessary, including providing enforcement assistance; or

24 (d) Permitting a federal immigration officer to enter and conduct en-  
25 forcement activities at a municipal or county jail to enforce federal  
26 immigration laws.

27 19-5907. COMPLAINT -- EQUITABLE RELIEF. (1) Any person, including the  
28 federal government, may file a complaint with the attorney general if the  
29 person offers evidence to support an allegation that a governmental entity  
30 has adopted, enforced or endorsed a policy under which the entity prohibits  
31 or discourages the enforcement of immigration laws or that the entity, by  
32 consistent actions, prohibits or discourages the enforcement of those laws.  
33 The person must include with the complaint the evidence the person has that  
34 supports the complaint.

35 (2) A governmental entity for which the attorney general has received a  
36 complaint under subsection (1) of this section shall comply with a document  
37 request, including a request for supporting documents from the attorney gen-  
38 eral, related to the complaint.

39 (3) If the attorney general determines that a complaint filed under  
40 subsection (1) of this section against a governmental entity is valid, the  
41 attorney general shall, no later than the tenth day after the date of the  
42 determination, provide written notification to the entity that:

43 (a) The complaint has been filed;

44 (b) The attorney general has determined that the complaint is valid;

45 (c) The attorney general is authorized to file an action to enjoin the  
46 violation if the entity does not come into compliance with the require-  
47 ments of section 19-5906, Idaho Code, on or before the ninetieth day af-  
48 ter the date the notification is provided; and

1 (d) The entity shall be denied state grant funds for the state fiscal  
2 year following the year in which a final judicial determination in an  
3 action brought under subsection (5) of this section is made.

4 (4) No later than the thirtieth day after the day a governmental entity  
5 receives written notification under subsection (3) of this section, the gov-  
6 ernmental entity shall provide the attorney general with a copy of:

7 (a) The entity's written policies related to immigration enforcement  
8 actions;

9 (b) Each immigration detainer received by the entity from the United  
10 States department of homeland security; and

11 (c) Each response sent by the entity for a detainer described in para-  
12 graph (b) of this subsection.

13 (5) If the attorney general determines that a complaint filed under  
14 subsection (1) of this section against a governmental entity is valid, the  
15 attorney general may file a petition for a writ of mandamus or apply for  
16 other appropriate equitable relief in a district court in Ada county, or in  
17 a county in which the principal office of the entity is located, to compel  
18 the entity that adopts, enforces or endorses a policy under which the govern-  
19 mental entity prohibits or discourages the enforcement of immigration laws  
20 or that, by consistent actions, prohibits or discourages the enforcement of  
21 those laws to comply with section 19-5906, Idaho Code. The attorney general  
22 may recover reasonable expenses incurred in obtaining relief under this sub-  
23 section, including court costs, reasonable attorney's fees, investigative  
24 costs, witness fees and deposition costs.

25 (6) An appeal of a suit brought under subsection (5) of this section is  
26 governed by the procedures for accelerated appeals in civil cases under the  
27 Idaho appellate rules. The appellate court shall render its final order or  
28 judgment with the least possible delay.

29 19-5908. DENIAL OF SALES TAX DISTRIBUTION FUNDS. (1) A governmental  
30 entity may not receive its designated portion of sales tax appropriations  
31 provided for in section 63-3638(10) (a) and (b), Idaho Code, if the entity  
32 adopts, enforces or endorses a policy under which the entity prohibits or  
33 discourages the enforcement of immigration laws or, by consistent actions,  
34 prohibits or discourages the enforcement of immigration laws.

35 (2) State funds, provided for under section 63-3638(10) (a) and (b),  
36 Idaho Code, for a governmental entity, shall be denied for the state fiscal  
37 year following the year in which a final judicial determination in an action  
38 brought under section 19-5907, Idaho Code, is made that the entity has inten-  
39 tionally prohibited or discouraged the enforcement of immigration laws. The  
40 denial of funds to one (1) or more governmental entities under this subsec-  
41 tion shall not affect the calculation of the pro rata distribution of sales  
42 tax revenues to other governmental entities receiving funds under section  
43 63-3638(10) (a) and (b), Idaho Code.

44 (3) For purposes of this section, a county and a sheriff's department  
45 within that county shall be treated as the same governmental entity. If ei-  
46 ther the county or the sheriff's department, or both, are found to have vio-  
47 lated the provisions of this chapter and have received a final judicial judg-  
48 ment under section 19-5907, Idaho Code, the county shall be denied its por-

1 tion of appropriations provided for under section 63-3638(10) (a) and (b),  
2 Idaho Code.

3 19-5909. ENACTMENT. No later than January 1, 2018, each local law en-  
4 forcement agency subject to the provisions of this act shall:

5 (1) Formalize in writing any unwritten, informal policies relating to  
6 the enforcement of immigration laws; and

7 (2) Update the agency's policies to be consistent with the provisions  
8 of this act and to include provisions prohibiting an agency officer or em-  
9 ployee from preventing agency personnel from taking immigration enforcement  
10 actions described by section 19-5906, Idaho Code.

11 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared  
12 to be severable and if any provision of this act or the application of such  
13 provision to any person or circumstance is declared invalid for any reason,  
14 such declaration shall not affect the validity of the remaining portions of  
15 this act.

16 SECTION 3. An emergency existing therefor, which emergency is hereby  
17 declared to exist, this act shall be in full force and effect on and after its  
18 passage and approval.