

2017 Regular Session

HOUSE BILL NO. 135

BY REPRESENTATIVE HODGES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ALIENS/ILLEGAL: Prohibits sanctuary policies

1 AN ACT

2 To enact Chapter 21 of Title 49 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 49:1401 through 1408, relative to illegal aliens; to prohibit the adoption of
4 sanctuary policies; to provide for duties and requirements for state agencies, political
5 subdivisions, judges, and law enforcement agencies; to provide for the authority of
6 the attorney general; to provide definitions; to provide for complaint procedures; to
7 provide for a cause of action; to provide for penalties; to provide for the adoption of
8 rules by the state treasurer; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 21 of Title 49 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 49:1401 through 1408, is hereby enacted to read as follows:

12 CHAPTER 21. LOUISIANA SANCTUARY CITY

13 PROHIBITION ACT

14 §1401. Short title

15 This Chapter may be cited as the "Louisiana Sanctuary City Prohibition Act."

16 §1402. Definitions

17 (1) "Alien" means a person who is not a United States citizen.

18 (2) "Illegal alien" means an alien who is not legally present in the United

19 States.

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

4 (4) "I.C.E." means the United States Immigration and Customs Enforcement.

5 (5) "I.C.E. detainer" means a United States Department of Homeland
6 Security I-247 or a similar or successor form that requests a state or local law
7 enforcement agency to maintain temporary custody of an illegal alien for federal
8 authorities based on a violation of federal immigration laws.

9 (6) "Lawful detention" means the detention of an individual by a state or
10 local law enforcement agency for the investigation of a violation of any state law
11 who is neither a victim of, witness to, or who is reporting a criminal offense.

12 (7) "Sanctuary policy" means any order, ordinance, rule, law, policy, or
13 guideline, whether formally or informally adopted, that provides for any of the
14 following:

15 (a) Prohibits or discourages cooperation with I.C.E. in the enforcement of
16 federal immigration law.

17 (b) Prohibits or discourages law enforcement officers from sending,
18 requesting, receiving, maintaining, or exchanging information with I.C.E.

19 (c) Restricts or imposes conditions upon compliance with valid I.C.E.
20 detainer requests.

21 (d) Prevents law enforcement officers from asking any suspect, arrestee, or
22 other person under lawful detention about his name, date and place of birth, and
23 immigration status while enforcing or conducting an official investigation into a
24 violation of any law of this state.

25 §1403. Duties of judges and law enforcement agencies

26 A. If a person is under lawful detention based on reasonable suspicion of a
27 violation of a state law or local ordinance and is unable to provide proof of lawful
28 presence in the United States, not later than forty-eight hours after the person is

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

3 (1) Notify I.C.E. that the person under lawful detention is unable to provide
4 proof of lawful presence.

5 (2) Review any information available from I.C.E. and the federal Priority
6 Enforcement Program.

7 (3) If the information obtained reveals that the person is unlawfully present,
8 the law enforcement agency shall provide notice of the person's unlawful status to
9 the judge or magistrate authorized to grant or deny the person's bail and record that
10 fact in the person's case file.

11 (4) A judge or magistrate who receives notice of a person's unlawful
12 presence under this Section shall record that status in the court record.

13 B. All law enforcement agencies in custody of an illegal alien who is subject
14 to an I.C.E. detainer request shall comply with the following requirements:

15 (1) Provide notice to the judge or magistrate authorized to grant or deny bail
16 that the illegal alien is subject to the detainer request.

17 (2) Record in the person's case file that the person is subject to a detainer
18 request.

19 (3) Comply with and fulfill the detainer request.

20 C.(1) In a non-felony criminal case in which the sentence requires an illegal
21 alien, who is subject to an I.C.E. detainer request, to be confined in a correctional
22 facility, at the time of sentencing, the judge shall issue an order requiring the
23 correctional facility to reduce the illegal alien's sentence by not more than seven days
24 when both of the following conditions are met:

25 (a) I.C.E. gives notice to the correctional facility that the agency is
26 requesting the transfer of custody in order to deport the illegal alien.

27 (b) The correctional facility determines that the reduction in the sentence
28 will facilitate the seamless transfer of the illegal alien into federal custody.

1 (2) If the information regarding the immigration status of an illegal alien is
2 not available at the time of sentencing or if a detainer request is issued by I.C.E. after
3 sentencing and confinement of an illegal alien, the law enforcement agency or
4 correctional facility receiving the request shall give notice to the judge of record who
5 shall issue the order when the detainer request is valid and the reduction in sentence
6 will facilitate the deportation of the illegal alien.

7 §1404. Sanctuary policy prohibition

8 No state agency or political subdivision of the state shall enact or adopt any
9 sanctuary policy or otherwise endorse or enforce a policy which discourages
10 enforcement of federal immigration laws or prohibits a law enforcement officer from
11 communicating or cooperating with federal authorities concerning the immigration
12 status of any person located within the state of Louisiana.

13 §1405. Duty of political subdivisions

14 A. In order to be eligible for state grant funds or general appropriation funds,
15 any political subdivision of this state must certify by affidavit to the division of
16 administration that it is in compliance with and shall continue to comply with the
17 provisions of this Chapter regarding cooperation with federal immigration
18 authorities.

19 B. If a political subdivision is found to be in violation of this Chapter by the
20 attorney general and enjoined by a judicial order, the attorney general shall ensure
21 by appropriate means that the state recovers all monies received by the particular
22 entity from the time it became noncompliant with the provisions of this Chapter.

23 §1406. Notice to official and law enforcement officers

24 The governing authority of each political subdivision and the head of each
25 state agency with law enforcement powers shall provide each law enforcement
26 officer with a printed copy of the provisions of this Chapter, written notice of the
27 duty to cooperate with federal agencies on matters pertaining to the enforcement of
28 federal immigration laws, and the duty to comply with all valid I.C.E. detainer
29 requests.

1 §1407. Complaint; procedures; penalties

2 A. Any person or entity, including the federal government or any member
3 of the state legislature, may file a complaint regarding a violation of this Chapter
4 with the office of the attorney general. The complaint must provide evidence in
5 support of the claim. The complaint must be in writing and in a form and manner as
6 prescribed by the attorney general.

7 B. Upon receiving a complaint, the attorney general shall investigate and
8 determine whether there is a violation of this Chapter. The entity that is the subject
9 of the complaint shall comply with all document requests from the attorney general
10 related to the complaint including but not limited to the entity's written policies
11 related to immigration enforcement actions, each I.C.E. detainer request received,
12 and the response to each of the requests.

13 C. If the attorney general determines that a filed complaint is valid and a
14 state agency or political subdivision has a sanctuary policy, the attorney general shall
15 issue an opinion outlining the violation within ten days of the determination.

16 (1) The opinion issued shall serve as notice to the entity and set forth the
17 violations of this Chapter by outlining written findings of fact that describe with
18 specificity the existence and nature of the sanctuary policy.

19 (2) The opinion shall be sent to the head of the agency or political
20 subdivision, the governor, the treasurer, the president of the Senate, the speaker of
21 the House of Representatives, and to each member of the House Committee on
22 Appropriations and the Senate Committee on Finance.

23 (3) Upon notification of a violation of this Chapter by the attorney general,
24 the agency or political subdivision shall have ninety days in which to repeal the
25 sanctuary policy.

26 §1408. Penalties

27 A. If the state agency or political subdivision fails to comply within ninety
28 days of notice as provided in R.S. 49:1407, the attorney general has the authority to
29 take the following actions:

1 (1) The attorney general may file a civil action for declaratory and injunctive
2 relief. If the court finds that the entity is in violation of this Chapter, it shall enjoin
3 the violation.

4 (2) The attorney general shall give notice of the judicial order enjoining the
5 violation to the governor, the treasurer, the president of the Senate, the speaker of the
6 House of Representatives, and to each member of the House Committee on
7 Appropriations and the Senate Committee on Finance.

8 B. Upon adjudication by the court declaring that an entity is in violation of
9 this Chapter, the court shall enjoin the unlawful sanctuary policy and order that such
10 entity pay a civil penalty to the state of an amount not less than one thousand dollars
11 but no more than five thousand dollars for each day the entity remains noncompliant
12 after the injunction is granted.

13 C. The court shall have continuing jurisdiction over parties and the subject
14 matter and may enforce its orders with imposition of additional civil penalties or
15 contempt of court as provided by law.

16 D. Venue of an action brought pursuant to this Chapter shall be proper in the
17 district court where the governing authority is located or in the Nineteenth Judicial
18 District Court in the parish of East Baton Rouge.

19 E. The attorney general may recover reasonable expenses incurred in
20 obtaining relief under this Chapter including court costs, reasonable attorney fees,
21 investigative costs, witness fees, and deposition costs from the state agency or
22 political subdivision in violation of this Chapter.

23 F. The state treasurer shall adopt rules and regulations necessary to
24 implement the penalties provided in this Chapter and ensure that the penalty is not
25 imposed on any entity not named in the attorney general opinion and judicial order.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 135 Original

2017 Regular Session

Hodges

Abstract: Prohibits state agencies or political subdivisions from developing certain policies with respect to immigration enforcement.

Proposed law defines "sanctuary policy" as any order, ordinance, rule, law, policy, or guideline, whether formally or informally adopted, that provides for any of the following:

- (1) Prohibits or discourages cooperation with I.C.E. in the enforcement of immigration laws.
- (2) Prevents law enforcement officers from exchanging information with I.C.E.
- (3) Prevents law enforcement from asking any suspect, arrestee, or person in lawful custody about his name, date and place of birth, or immigration status.
- (4) Restricts or imposes any conditions upon the state agency or political subdivision's cooperation or compliance with detainers or other requests from I.C.E.

Proposed law requires the following duties of a law enforcement agency:

- (1) If a person is unable to provide proof of citizenship or immigration status within 48 hours after arrest, the law enforcement agency shall notify I.C.E. and review any information available from the federal Priority Enforcement Program.
- (2) If the person is not a citizen, the law enforcement agency is required to provide notice to the judge or magistrate and record it in the court record.
- (3) If a law enforcement agency has a person in custody that is subject to an immigration detainer issued by I.C.E., the law enforcement agency must send notice to the judge or magistrate, record in the case file that the person is subject to an immigration detainer, and fully comply with the detainer.

Proposed law provides that in non-felony criminal cases when the judgment requires an illegal alien to be confined in a correctional facility and the illegal alien is subject to an immigration detainer, the judge shall order the correctional facility to reduce the defendant's sentence no longer than seven days when:

- (1) I.C.E. gives notice to the correctional facility that the agency is requesting the transfer of custody in order to deport the illegal alien.
- (2) The correctional facility determines that the reduction in sentence will facilitate the seamless transfer of the illegal alien into federal custody.

Proposed law further requires that if the immigration status of an illegal alien is not available at the time of sentencing or if a detainer is issued after sentencing, the law enforcement agency or correctional facility must provide notice to the judge of record who shall issue an order stating that the detainer request is valid and the reduction will facilitate the deportation of the illegal alien.

Proposed law prohibits a state agency or political subdivision from adopting a sanctuary policy. Proposed law further provides that any state agency or political subdivision that enacts or adopts a sanctuary policy will be subject to the provisions of proposed law.

Proposed law provides that a political subdivision must certify to the division of administration by affidavit that it is in compliance with the provisions of proposed law and federal immigration laws in order to be eligible for state grant funds or general appropriation funds. If the political subdivision is found not to be in compliance with proposed law by the attorney general and enjoined by a judicial order, the attorney general shall ensure that the state recovers all monies received by the particular entity from the time it became noncompliant with proposed law.

Proposed law requires the governing authority of each political subdivision and the head of each state agency to provide each law enforcement officer with a printed copy of the provisions of proposed law and with written notice of the duties to cooperate.

Proposed law allows any person including the federal government or member of the state legislature to file a written complaint with the attorney general and requires them to provide evidence regarding a violation of proposed law. Proposed law further provides that the state agency or political subdivision must comply with document requests from the attorney general related to the complaint.

Proposed law provides that if the attorney general determines that the state agency or political subdivision has a sanctuary policy, the attorney general shall issue an opinion outlining the violation within 10 days of the determination and shall send the opinion to the head of the state agency or political subdivision, the governor, the treasurer, speaker of the House, president of the Senate, and each member of the House Committee on Appropriations and the Senate Committee on Finance.

Proposed law requires that upon notification by the attorney general of a violation of proposed law, the state agency or political subdivision shall have 90 days to repeal the sanctuary policy and failure to do so allows the attorney general to file action for declaratory and injunctive relief against the state agency or political subdivision in violation of proposed law.

Proposed law states that upon adjudication by the court declaring that an entity is in violation of proposed law, the court shall enjoin the sanctuary policy and order civil penalties to the state between \$1,000-\$5,000 for each day that the entity remains noncompliant with proposed law after the injunction is granted.

Proposed law allows the attorney general to recover reasonable expenses incurred in obtaining relief under proposed law.

Proposed law requires that the treasurer adopt rules to implement regarding proposed law.

(Adds R.S. 49:1401-1408)