

Amendment No. 1 to SB2332

Yager
Signature of Sponsor

AMEND Senate Bill No. 2332

House Bill No. 2315*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following language as a new chapter:

4-59-101.

The general assembly finds, determines, and declares that:

(1) Because the matters contained in this chapter have important statewide ramifications for compliance with and enforcement of federal immigration laws and for the welfare of all citizens in this state, these matters are of statewide concern;

(2) Allowing illegal immigrants to reside within this state undermines federal immigration laws and state laws allocating available resources; and

(3) The attorney general and reporter and all appropriate state law enforcement agencies are to vigorously pursue all federal moneys to which the state may be entitled for the reimbursement of moneys spent to comply with federal immigration laws.

4-59-102.

As used in this chapter:

(1) "Law enforcement agency":

(A) Means an agency in this state charged with enforcement of state or federal laws, or with managing custody of detained persons in

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this state, and includes, but is not limited to, state police, campus police, and the department of safety; and

(B) Includes officials, representatives, agents, and employees of an agency described in subdivision (1)(A);

(2) "Official" means an agent, employee, member, or representative of a state governmental entity, but does not mean the attorney general and reporter;

(3) "Sanctuary policy" means any directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated, that:

(A) Limits or prohibits any state governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien;

(B) Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of this state in violation of federal law;

(C) Violates 8 U.S.C. § 1373;

(D) Restricts in any way, or imposes any conditions on, a state or local governmental entity's cooperation or compliance with detainers or other requests from the United States department of homeland security, or other successor agency, to maintain custody of any alien or to transfer any alien to the custody of the United States department of homeland security, or other successor agency;

(E) Requires the United States department of homeland security, or other successor agency, to obtain a warrant or demonstrate probable cause before complying with detainers or other requests from the department to maintain custody of any alien or to transfer any alien to its custody; or

(F) Prevents law enforcement agencies from inquiring as to the citizenship or immigration status of any person; and

(4) "State governmental entity" means any state agency, bureau, commission, council, department, law enforcement agency, or unit thereof, but does not mean the office of the attorney general and reporter.

4-59-103.

(a) No state governmental entity or official shall adopt or enact a sanctuary policy. A state governmental entity that adopts or enacts a sanctuary policy is ineligible to receive any economic and community development state moneys until the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.

(b) A resident of this state may submit a complaint in writing as to whether a state governmental entity or official has violated this section. The complaint must be submitted to a member of the general assembly from the resident's district. The member shall then request that the attorney general and reporter investigate and issue an opinion as to whether a state governmental entity or official has violated this section.

(c) Upon receiving an opinion request, the attorney general and reporter shall investigate and determine whether a violation of this section has occurred. The attorney general and reporter shall issue and make public an opinion stating whether the state governmental entity or official, which is the subject of the opinion request, has adopted or enacted a sanctuary policy. Upon the issuance of an opinion by the attorney general and reporter that a state governmental entity or official has adopted or enacted a

sanctuary policy, the entity, or the entity to which the official belongs, becomes ineligible to receive any economic and development state moneys that would otherwise be remitted to the entity. Ineligibility commences on the date the opinion is issued and continues until such time that the attorney general and reporter certifies that the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.

(d) The attorney general and reporter shall send to the state governmental entity or official that was the subject of the investigation, to the department of economic and community development, and to the department of finance and administration a copy of any opinion issued pursuant to this section and any certification by the attorney general and reporter that a violation of this section is no longer in effect.

4-59-104.

(a) A person residing in a municipality or county who believes a state governmental entity or official has violated § 4-59-103 may file a complaint in chancery court in that person's county of residence.

(b) The person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of § 4-59-103 has occurred.

(c) If the court finds the state governmental entity or official is in violation of § 4-59-103, the court shall issue a writ of mandamus against the entity or official ordering the entity or official to comply with § 4-59-103, enjoin the entity or official from further interference, and take other action to ensure compliance as is within the jurisdiction of the court.

(d) A state governmental entity or official has no less than one hundred twenty (120) days from the date of the court's order to comply with the order. If, after one hundred twenty (120) days, the entity or official has not complied with the court's order, the court may take whatever action necessary to enforce compliance.

SECTION 2. Tennessee Code Annotated, Section 7-68-102, is amended by deleting the section and substituting the following:

As used in this chapter:

(1) "Law enforcement agency":

(A) Means an agency of a political subdivision of this state charged with enforcement of state, county, municipal, or federal laws, or with managing custody of detained persons in this state, and includes, but is not limited to, county and other municipal police departments and sheriffs' departments; and

(B) Includes officials, representatives, agents, and employees of an agency described in subdivision (1)(A);

(2) "Local governmental entity" means a governing body, board, commission, committee, department, or law enforcement agency of a municipality, county, or other political subdivision of this state;

(3) "Official" means an agent, employee, member, or representative of a local governmental entity; and

(4) "Sanctuary policy" means any directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated, that:

(A) Limits or prohibits any local governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien;

(B) Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of this state in violation of federal law;

(C) Violates 8 U.S.C. § 1373;

(D) Restricts in any way, or imposes any conditions on, a state or local governmental entity's cooperation or compliance with detainers or other requests from the United States department of homeland security, or other successor agency, to maintain custody of any alien or to transfer any alien to the custody of the United States department of homeland security, or other successor agency;

(E) Requires the United States department of homeland security, or other successor agency, to obtain a warrant or demonstrate probable cause before complying with detainers or other requests from the department to maintain custody of any alien or to transfer any alien to its custody; or

(F) Prevents law enforcement agencies from inquiring as to the citizenship or immigration status of any person.

SECTION 3. Tennessee Code Annotated, Section 7-68-103, is amended by deleting the section and substituting instead the following:

(a) No local governmental entity or official shall adopt or enact a sanctuary policy. A local governmental entity that adopts or enacts a sanctuary policy is ineligible to receive any economic and community development state moneys until the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.

(b) A resident of this state may submit a complaint in writing as to whether a local governmental entity or official has violated this section. The complaint must be submitted to a member of the general assembly from the resident's district. The member shall then request that the attorney general and reporter investigate and issue an opinion as to whether a local governmental entity or official has violated this section.

(c) Upon receiving an opinion request, the attorney general and reporter shall investigate and determine whether a violation of this section has occurred. The attorney

general and reporter shall issue and make public an opinion stating whether the local governmental entity or official, which is the subject of the opinion request, has adopted or enacted a sanctuary policy. Upon the issuance of an opinion by the attorney general and reporter that a local governmental entity or official has adopted or enacted a sanctuary policy, the entity, or the entity to which the official belongs, becomes ineligible to receive any economic and community development state moneys that would otherwise be remitted to the entity. Ineligibility commences on the date the opinion is issued and continues until such time that the attorney general and reporter certifies that the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.

(d) The attorney general and reporter shall send to the local governmental entity that was the subject of the investigation, to the department of economic and community development, and to other appropriate departments of state government a copy of any opinion issued pursuant to this section and any certification by the attorney general and reporter that a violation of this section is no longer in effect.

SECTION 4. Tennessee Code Annotated, Section 7-68-104(c), is amended by deleting the subsection and substituting instead the following:

(c) If the court finds the local governmental entity or official is in violation of § 7-68-103, the court shall issue a writ of mandamus against the entity or official ordering the entity or official to comply with § 7-68-103, enjoin the entity or official from further interference, and take other action to ensure compliance as is within the jurisdiction of the court.

SECTION 5. Tennessee Code Annotated, Title 7, Chapter 68, is amended by adding the following language as a new section:

(a) All law enforcement agencies and officials are authorized, in accordance with 8 U.S.C. § 1357(g)(10), to communicate with the appropriate federal official regarding the immigration status of any individual, including reporting knowledge that a particular

alien is not lawfully present in the United States or otherwise to cooperate with the appropriate federal official in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

(b) A law enforcement agency may negotiate the terms of a memorandum of agreement between the law enforcement agency and the appropriate federal official in 8 U.S.C. § 1357(g), concerning the enforcement of federal immigration laws. Any memorandum of agreement negotiated pursuant to 8 U.S.C. § 1357(g) must:

(1) Be entered into in accordance with federal law;

(2) Require that each officer employed by the law enforcement agency be trained in accordance with the memorandum of agreement between the law enforcement agency and the appropriate federal official concerning the law enforcement officer's role in enforcing federal immigration laws, in accordance with 8 U.S.C. § 1357(g); and

(3) Allow for the enforcement of federal immigration law to the full extent permitted under federal law.

(c)

(1) Whenever a law enforcement agency enters into a memorandum of agreement pursuant to subsection (b), notice of the agreement must be submitted in writing to the governor, the office of the lieutenant governor who shall transmit the notice to the members of the senate, and the office of the speaker of the house of representatives who shall transmit the notice to the members of the house of representatives.

(2) Any renewal, modification, or termination of a memorandum of agreement must be reported in the same manner as the original memorandum of agreement in subdivision (c)(1).

SECTION 6.

(a) This act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(b) In complying with the requirements of this act, no law enforcement officer shall consider an individual's race, color, or national origin, except to the extent permitted by the United States or Tennessee constitutions, and federal law.

(c) If any part or provision of this act is in conflict or inconsistent with applicable provisions of federal law, or otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or provision shall be suspended and superseded by such applicable laws, and the remainder of this act shall not be affected thereby.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.