

1 SB302  
2 190645-1  
3 By Senator Hightower  
4 RFD: Judiciary  
5 First Read: 13-FEB-18

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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 state, municipality, or county official, agency, or  
14 personnel to intentionally aid or enable any  
15 individual in the commission of any violation of  
16 federal or state immigration law, and would provide  
17 penalties.

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

1 affected entity; or the Legislature appropriates  
2 funds, or provides a local source of revenue, to  
3 the entity for the purpose.

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

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
15

16 Relating to immigration; to amend Section 31-13-5,  
17 Code of Alabama 1975, to provide that no official, agency, or  
18 personnel of this state, any county, or any municipality may  
19 intentionally aid or enable any individual in the commission  
20 of any violation of federal or state immigration law, to  
21 provide penalties; and in connection therewith would have as  
22 its purpose or effect the requirement of a new or increased  
23 expenditure of local funds within the meaning of Amendment 621  
24 of the Constitution of Alabama of 1901, now appearing as  
25 Section 111.05 of the Official Recompilation of the  
26 Constitution of Alabama of 1901, as amended.  
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3           "§31-13-5.

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

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

1 first appealed to the circuit court of the respective  
2 jurisdiction in which the alleged offending agency resides.

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

10 "(c) No official, agency, or personnel of this state  
11 or any county or municipality may take any action to  
12 intentionally aid or enable any individual in the commission  
13 of any violation of federal or state immigration law. A  
14 violation of this subsection shall be a Class C felony.

15 "~~(c)~~ (d) Except as provided by federal law, officials  
16 or agencies of this state, or any political subdivision  
17 thereof, including, but not limited to, an officer of a court  
18 of this state, may not be prohibited or in any way be  
19 restricted from sending, receiving, or maintaining information  
20 relating to the immigration status, lawful or unlawful, of any  
21 individual or exchanging that information with any other  
22 federal, state, or local governmental entity for any of the  
23 following official 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)~~(e) 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)~~ (f) A court shall collect the civil penalty  
10 prescribed in subsection ~~(d)~~ (e) and remit one half of the  
11 civil penalty to the Alabama Department of Homeland Security  
12 and the second half shall be remitted to the Alabama State Law  
13 Enforcement Agency.

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

23 "~~(g)~~ (h) 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)~~(i) 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)~~(j) 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. This act shall become effective on the  
14 first day of the third month following its passage and  
15 approval by the Governor, or its otherwise becoming law.