

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 179

Representative Keller

**Cosponsors: Representatives Antani, Dean, Hood, Riedel, Schaffer, Sprague,
Vitale**

A BILL

To amend sections 9.63 and 5747.502 and to enact 1
sections 9.631, 9.632, and 9.633 of the Revised 2
Code to require state and local authorities to 3
cooperate with the federal government in the 4
enforcement of immigration laws, to prohibit a 5
local government that fails to do so from 6
receiving certain state funds, to provide for 7
the removal of officers of a local government 8
that fails to do so, and to declare an 9
emergency. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 9.63 and 5747.502 be amended and 11
sections 9.631, 9.632, and 9.633 of the Revised Code be enacted 12
to read as follows: 13

Sec. 9.63. (A) Notwithstanding any law, ordinance, or 14
collective bargaining contract to the contrary, no state or 15
local employee shall unreasonably fail to comply with any lawful 16
request for assistance made by any federal authorities carrying 17
out the provisions of the USA Patriot Act, any federal 18

~~immigration or~~ terrorism investigation, or any executive order 19
of the president of the United States pertaining to homeland 20
security, to the extent that the request is consistent with the 21
doctrine of federalism. 22

(B) No municipal corporation shall enact an ordinance, 23
policy, directive, rule, or resolution that would materially 24
hinder or prevent local employees from complying with the USA 25
Patriot Act or any executive order of the president of the 26
United States pertaining to homeland security or from 27
cooperating with state or federal ~~immigration services and~~ 28
terrorism investigations. 29

(C) (1) Any municipal corporation that enacts any 30
ordinance, policy, directive, rule, or resolution that division 31
(B) of this section prohibits is ineligible to receive any 32
homeland security funding available from the state. 33

(2) Whenever the director of public safety determines that 34
a municipal corporation has enacted any ordinance, policy, 35
directive, rule, or resolution that division (B) of this section 36
prohibits, the director shall certify that the municipal 37
corporation is ineligible to receive any homeland security 38
funding from the state and shall notify the general assembly of 39
that ineligibility. That municipal corporation shall remain 40
ineligible to receive any homeland security funding from the 41
state until the director certifies that the ordinance, policy, 42
directive, rule, or resolution has been repealed. 43

(D) (1) If a state or local employee states disagreement 44
with, or a critical opinion of, the USA Patriot Act, any federal 45
~~immigration or~~ terrorism policy, or any executive order of the 46
president of the United States pertaining to homeland security, 47
the statement of disagreement with or critical opinion of the 48

act or order is not sufficient to qualify for purposes of this 49
section as unreasonable noncompliance with a request for 50
assistance of the type division (A) of this section describes. 51

(2) Any municipal corporation's ordinance, policy, 52
directive, rule, or resolution that states disagreement with, or 53
a critical opinion of, any state or federal ~~immigration or~~ 54
terrorism policy, the USA Patriot Act, or any executive order of 55
the president of the United States pertaining to homeland 56
security is not sufficient to qualify as a "material hindrance 57
or prevention" of local employees from cooperating with federal 58
~~immigration services and~~ terrorism investigations or from 59
complying with the USA Patriot Act or any executive order of the 60
president of the United States pertaining to homeland security 61
for purposes of divisions (B), (C), and (D) of this section. 62

(E) As used in this section, "USA Patriot Act" means the 63
"Uniting and Strengthening America by Providing Appropriate 64
Tools Required to Intercept and Obstruct Terrorism (USA Patriot 65
Act) Act of 2001," Pub. L. No. 107-056, 115 Stat. 272, as 66
amended. 67

Sec. 9.631. (A) As used in this section and sections 9.632 68
and 9.633 of the Revised Code: 69

(1) "Law enforcement agency" means a municipal or township 70
police department, the office of a sheriff, the state highway 71
patrol, or any other state or local governmental body that 72
enforces criminal laws and that has employees who have a 73
statutory power of arrest. 74

(2) "State or local governmental entity" means any agency, 75
board, bureau, commission, council, department, division, 76
office, or other organized body established by the state or a 77

political subdivision for the exercise of any function of the 78
state or a political subdivision. 79

(3) "State or local public benefit" has the same meaning 80
as in division (c) of section 411 of the "Personal 81
Responsibility and Work Opportunity Reconciliation Act of 1996," 82
8 U.S.C. 1621(c), as amended. 83

(B) A law enforcement agency shall do all of the 84
following: 85

(1) Participate in any available program operated by the 86
United States department of homeland security or its successor 87
department that allows the law enforcement agency to submit to 88
federal authorities information about an arrestee in order to 89
enable those authorities to determine whether the arrestee is 90
unlawfully present in the United States; 91

(2) Immediately report the identity of any arrestee whom a 92
peace officer has reasonable cause to believe is unlawfully 93
present in the United States to the appropriate office of the 94
United States immigration and customs enforcement agency or its 95
successor agency; 96

(3) Detain a person who is unlawfully present in the 97
United States, upon receiving a lawful federal request or order 98
to do so, until the person is transferred into federal custody; 99

(4) Otherwise cooperate and comply with federal officials 100
in the enforcement of federal immigration law. 101

(C) (1) Each state or local governmental entity 102
administering a state or local public benefit shall comply with 103
section 411 of the "Personal Responsibility and Work Opportunity 104
Reconciliation Act of 1996," 8 U.S.C. 1621, as amended. 105

(2) Except as otherwise provided in division (C) (3) of 106
this section, whenever a person who is not a United States 107
citizen or national applies to a state or local governmental 108
entity for a state or local public benefit, the state or local 109
governmental entity shall verify whether the person is 110
ineligible for the benefit under section 411 of the "Personal 111
Responsibility and Work Opportunity Reconciliation Act of 1996," 112
8 U.S.C. 1621, as amended, using the systematic alien 113
verification for entitlements (SAVE) program, or its successor 114
program, operated by the United States department of homeland 115
security or its successor agency. 116

(3) Division (C) (2) of this section does not apply when a 117
person applies for a state or local public benefit described in 118
division (b) of section 411 of the "Personal Responsibility and 119
Work Opportunity Reconciliation Act of 1996," 8 U.S.C. 1621, as 120
amended, or for a state or local public benefit for which the 121
Revised Code affirmatively provides eligibility for persons 122
described in division (a) of that section. 123

(D) No state or local government agency or political 124
subdivision shall adopt an ordinance, policy, directive, rule, 125
or resolution that prohibits or otherwise restricts a public 126
official or employee from doing any of the following: 127

(1) Complying with the requirements of division (B) or (C) 128
of this section; 129

(2) Inquiring about a person's name, birthdate, place of 130
birth, or citizenship or immigration status in the course of 131
investigating or prosecuting a violation of any law or 132
ordinance; 133

(3) Maintaining information about a person's citizenship 134

or immigration status; 135

(4) Sending information to, or requesting or receiving 136
information from, a federal, state, or local government agency 137
or employee concerning a person's citizenship or immigration 138
status or for the purpose of determining a person's citizenship 139
or immigration status. 140

Sec. 9.632. (A) Each law enforcement agency and each state 141
or local governmental entity that administers a state or local 142
public benefit shall notify its officers and employees of the 143
requirements of sections 9.63 and 9.631 of the Revised Code. 144

(B) (1) A resident of this state who believes that a 145
county, township, or municipal corporation or the law 146
enforcement agency that serves the county, township, or 147
municipal corporation is not complying with the requirements of 148
section 9.631 of the Revised Code may file a complaint with the 149
director of public safety. Upon receiving the complaint, the 150
director shall investigate whether the county, township, 151
municipal corporation, or law enforcement agency is complying 152
with the requirements of that section and shall submit a report 153
of the director's findings to the treasurer of state, to the tax 154
commissioner, to the speaker and minority leader of the house of 155
representatives, and to the president and minority leader of the 156
senate. 157

(2) If the director determines that a county, township, 158
municipal corporation, or law enforcement agency originally 159
reported as failing to comply with the requirements of section 160
9.631 of the Revised Code is in compliance with those 161
requirements, the director promptly shall issue an addendum to 162
the director's original report concerning that county, township, 163
municipal corporation, or law enforcement agency to the persons 164

who received the original report. 165

(C) If the director of public safety determines that a 166
county, township, or municipal corporation or the law 167
enforcement agency that serves the county, township, or 168
municipal corporation is not in compliance with the requirements 169
of section 9.631 of the Revised Code, then the county, township, 170
or municipal corporation is ineligible to receive homeland 171
security funding and any local government fund distributions 172
from the state until the director of public safety certifies in 173
an addendum issued under division (B) (2) of this section that 174
the county, township, municipal corporation, or law enforcement 175
agency is in compliance with the requirements of that section. 176

Sec. 9.633. (A) A person who has suffered a personal 177
injury, death, or property loss, the person's legal 178
representative, or the administrator of the person's estate may 179
file a complaint seeking the removal of a public officer in the 180
legislative or executive branch of government of a county, 181
township, or municipal corporation if all of the following 182
apply: 183

(1) A criminal offense that occurred on or after the 184
effective date of this section was a proximate cause of the 185
person's personal injury, death, or property loss. 186

(2) A person who was unlawfully present in the United 187
States at the time of the offense has been convicted of the 188
offense. 189

(3) The county, township, or municipal corporation or the 190
law enforcement agency that serves the county, township, or 191
municipal corporation was not in compliance with the 192
requirements of section 9.631 of the Revised Code at the time of 193

<u>the offense.</u>	194
<u>(4) At the time of the offense, one of the following was</u>	195
<u>true:</u>	196
<u>(a) The offender resided or worked in the county,</u>	197
<u>township, or municipal corporation. For purposes of this</u>	198
<u>division, a person resides in the place in which the person's</u>	199
<u>habitation is fixed and to which, whenever the person is absent,</u>	200
<u>the person has the intention of returning.</u>	201
<u>(b) The offender spent time in the county, township, or</u>	202
<u>municipal corporation because the offender received an actual or</u>	203
<u>perceived benefit from the failure of the county, township, or</u>	204
<u>municipal corporation or the law enforcement agency that serves</u>	205
<u>the county, township, or municipal corporation to comply with</u>	206
<u>the requirements of section 9.631 of the Revised Code.</u>	207
<u>(5) The public officer did any of the following:</u>	208
<u>(a) In the case of a member of the legislative authority</u>	209
<u>of the county, township, or municipal corporation, voted in</u>	210
<u>favor of a resolution, ordinance, order, rule, or policy that</u>	211
<u>caused the county, township, or municipal corporation or the law</u>	212
<u>enforcement agency that serves the county, township, or</u>	213
<u>municipal corporation not to comply with the requirements of</u>	214
<u>section 9.631 of the Revised Code;</u>	215
<u>(b) Issued or adopted an order, rule, or policy that</u>	216
<u>caused the county, township, or municipal corporation or the law</u>	217
<u>enforcement agency that serves the county, township, or</u>	218
<u>municipal corporation not to comply with the requirements of</u>	219
<u>that section;</u>	220
<u>(c) Enforced or otherwise implemented a resolution,</u>	221
<u>ordinance, order, rule, or policy that caused the county,</u>	222

township, or municipal corporation or the law enforcement agency 223
that serves the county, township, or municipal corporation not 224
to comply with the requirements of that section. 225

(B) A person who files a complaint under this section 226
shall file the complaint in the court of common pleas of the 227
county in which the public officer resides. The prosecuting 228
attorney of the county shall prosecute the removal, except that 229
if the prosecuting attorney is the subject of the complaint, the 230
attorney general shall appoint a special prosecutor to prosecute 231
the removal. The court shall hold a hearing on the complaint not 232
later than thirty days after it is filed. Not later than ten 233
days before the hearing, the court shall cause a copy of the 234
complaint and a notice of the hearing to be served on the public 235
officer and on the prosecutor. The court may suspend the officer 236
pending the hearing. 237

(C) (1) A judge shall try the case, unless the public 238
officer demands a jury trial under division (C) (2) of this 239
section. If the judge determines that all of the elements 240
described in division (A) of this section are true, the judge 241
shall order that the public officer be removed from office and 242
shall file a full, detailed statement of the reasons for the 243
removal with the clerk of the court. The proceedings and the 244
findings of the judge shall be matters of public record. 245

(2) If the public officer demands a jury trial, a jury 246
composed of twelve persons who satisfy the qualifications of a 247
juror specified in section 2313.17 of the Revised Code shall 248
hear the case. If nine or more members of the jury find that all 249
of the elements described in division (A) of this section are 250
true, the jury shall return a finding for the removal of the 251
public officer, the judge shall order that the public officer be 252

removed from office, and the finding and order shall be filed 253
with the clerk of the court and made a matter of public record. 254
If less than nine members of the jury find that all of the 255
elements described in division (A) of this section are true, the 256
jury shall return a finding that the complaint be dismissed, and 257
the judge shall order that the complaint be dismissed. 258

(D) (1) The court of appeals may review the decision of the 259
court of common pleas on appeal on questions of law. Not later 260
than twenty days after the court of common pleas enters its 261
decision, a party who seeks to appeal the decision shall request 262
a hearing in the court of appeals in order to show good cause 263
why the court of appeals should grant leave to appeal. The court 264
of appeals shall hold the hearing not later than thirty days 265
after the court of common pleas enters its decision and shall 266
notify the public officer and the prosecutor of the hearing. If 267
the court of appeals refuses to grant leave to appeal, the 268
decision shall be final. 269

(2) If the court of appeals grants leave to appeal, the 270
appellant shall file the transcript of the record and the notice 271
of appeal in the court of appeals not later than thirty days 272
after the court of common pleas enters its decision. The court 273
of appeals shall hear the case not later than thirty days after 274
the filing of the notice of appeal. The decision of the court of 275
appeals in passing upon the merits of the case in the appellate 276
proceedings shall be final. 277

(E) The court of common pleas and the court of appeals may 278
subpoena witnesses and compel their attendance in the same 279
manner as in civil cases. The sheriff of the county in which a 280
witness resides shall serve process upon the witness. The 281
witness fees and other fees in connection with the removal 282

proceedings shall be the same as in civil cases, and the county 283
shall pay the expenses incurred in the proceedings out of its 284
general fund. 285

Sec. 5747.502. (A) As used in this section: 286

(1) "Delinquent subdivision" means a municipal 287
corporation, township, or county that has not filed a report or 288
signed statement under section 4511.0915 of the Revised Code, as 289
required under that section and that is not a sanctuary 290
subdivision. 291

(2) "Noncompliant subdivision" means a municipal 292
corporation, township, or county that files a report under 293
division (A)(1) of section 4511.0915 of the Revised Code for the 294
most recent calendar quarter and that is not a sanctuary 295
subdivision. 296

(3) "Sanctuary subdivision" means a political subdivision 297
that, according to the director of public safety, is not in 298
compliance with the requirements of section 9.631 of the Revised 299
Code, as described in division (C) of section 9.632 of the 300
Revised Code. 301

(B) (1) (a) Upon receiving notification of a delinquent 302
subdivision under division (C) (2) of section 4511.0915 of the 303
Revised Code, the tax commissioner shall do both of the 304
following: 305

(i) If the delinquent subdivision is a municipal 306
corporation, cease providing for payments to the municipal 307
corporation under division (C) of section 5747.50 of the Revised 308
Code, beginning with the next required payment; 309

(ii) Immediately notify the county auditor and county 310
treasurer required to provide for payments to the delinquent 311

subdivision from a county undivided local government fund that 312
such payments are to cease until the ~~tax~~-commissioner notifies 313
the auditor and treasurer under division (B) (3) (a) (ii) of this 314
section. 315

(b) A county treasurer receiving the notice under division 316
(B) (1) (a) (ii) of this section shall cease providing for payments 317
to the delinquent subdivision from a county undivided local 318
government fund, beginning with the next required payment. 319

(2) (a) Upon receiving notification that a county, 320
township, or municipal corporation is no longer a delinquent 321
subdivision under division (C) (3) of section 4511.0915 of the 322
Revised Code, the ~~tax~~-commissioner shall do both of the 323
following: 324

(i) ~~If~~ Except as provided in division (B) (2) (c) of this 325
section, if the formerly delinquent subdivision is a municipal 326
corporation, begin providing for payments to the municipal 327
corporation as required under division (C) of section 5747.50 of 328
the Revised Code, beginning with the next required payment. 329

(ii) Immediately notify the county auditor and county 330
treasurer who ceased payments ~~to the formerly delinquent~~ 331
~~subdivision~~ under division (B) (1) (b) of this section that the 332
~~treasurer shall begin providing for payment from a municipal~~ 333
corporation, township, or county undivided local government fund 334
~~to the formerly is no longer a delinquent subdivision under~~ 335
~~section 5747.51 or 5747.53 of the Revised Code.~~ 336

(b) ~~A~~ Except as provided in division (B) (2) (c) of this 337
section, a county treasurer receiving notice under division (B) 338
(2) (a) (ii) of this section shall provide for payments to the 339
formerly delinquent subdivision from a county undivided local 340

government fund under section 5747.51 or 5747.53 of the Revised Code, beginning with the next required payment. 341
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(c) If the formerly delinquent subdivision is a noncompliant subdivision, the commissioner and county treasurer shall reduce payments as required under division (C) of this section. 343
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(C) (1) Upon receiving notification of a noncompliant subdivision under division (C) (1) of section 4511.0915 of the Revised Code, the ~~tax~~-commissioner shall do both of the following: 347
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(a) If the ~~delinquent noncompliant~~ subdivision is a municipal corporation, reduce the amount of each of the next three local government fund payments the noncompliant subdivision would otherwise receive under division (C) of section 5747.50 of the Revised Code in an amount equal to one-third of the gross amount of fines reported by the noncompliant subdivision on the report filed for the calendar quarter. 351
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(b) If the reduction described in division (C) (1) (a) of this section exceeds the amount of money the noncompliant subdivision would otherwise receive under division (C) of section 5747.50 of the Revised Code, immediately notify the county auditor and county treasurer required to provide for payments to the noncompliant subdivision from a county undivided local government fund that each of the next three such payments are to be reduced to that subdivision in an amount equal to one-third of that excess. 358
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(2) A county treasurer receiving notice under division (C) (1) (b) of this section shall reduce the payments to the noncompliant subdivision from a county undivided local 367
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government fund as required by the notice. 370

(D) (1) The ~~tax~~ commissioner shall provide for payment of 371
an amount equal to amounts withheld from municipal corporations 372
under divisions (B) (1) (a) (i) and (C) (1) (a) of this section to 373
the undivided local government fund of the county from which the 374
municipal corporation receives payments under section 5747.51 or 375
5747.53 of the Revised Code. The county treasurer shall 376
distribute that money among subdivisions that are not delinquent 377
~~or, noncompliant, or sanctuary~~ subdivisions and that are 378
entitled to receive distributions under those sections by 379
increasing each such subdivision's distribution on a pro rata 380
basis. 381

(2) A county treasurer shall distribute any amount 382
withheld from a delinquent or noncompliant subdivision under 383
division (B) (1) (b) or (C) (2) of this section among other 384
subdivisions that are not delinquent ~~or, noncompliant, or~~ 385
sanctuary subdivisions by increasing each such subdivision's 386
distribution from the county's undivided local government fund 387
on a pro rata basis. 388

(E) (1) Upon receiving notification of a sanctuary 389
subdivision from the director of public safety under section 390
9.632 of the Revised Code, the commissioner shall do both of the 391
following: 392

(a) If the sanctuary subdivision is a municipal 393
corporation, cease providing for any payments to the municipal 394
corporation under division (C) of section 5747.50 of the Revised 395
Code, beginning with the next required payment; 396

(b) Immediately notify the county auditor and county 397
treasurer required to provide for payments to the sanctuary 398

subdivision from a county undivided local government fund that 399
such payments are to cease until the commissioner notifies the 400
auditor and treasurer under division (E) (3) (b) of this section. 401

A county treasurer receiving the notice under division (E) 402
(1) (b) of this section shall cease providing for payments to the 403
sanctuary subdivision from a county undivided local government 404
fund beginning with the next required payment. 405

(2) Upon receiving notification that a county, township, 406
or municipal corporation is no longer a sanctuary subdivision 407
under section 9.632 of the Revised Code, the commissioner shall 408
do both of the following: 409

(a) Except as provided in division (E) (2) (c) of this 410
section, if the former sanctuary subdivision is a municipal 411
corporation, resume payments to the municipal corporation as 412
required under division (C) of section 5747.50 of the Revised 413
Code beginning with the next required payment; 414

(b) Immediately notify the county auditor and county 415
treasurer who ceased payments under division (E) (1) (b) of this 416
section that the county, township, or municipal corporation is 417
no longer a sanctuary subdivision. 418

Except as provided in division (E) (2) (c) of this section, 419
a county treasurer receiving notice under division (E) (2) (b) of 420
this section shall resume payments to the former sanctuary 421
subdivision from a county undivided local government fund under 422
section 5747.51 or 5747.53 of the Revised Code beginning with 423
the next required payment. 424

(c) If the former sanctuary subdivision is a delinquent or 425
noncompliant subdivision, the commissioner and county treasurer 426
shall continue to withhold or reduce payments as required under 427

division (B) or (C) of this section. 428

(F) Each month, the commissioner shall certify to the 429
director of budget and management the total amount not paid to 430
sanctuary subdivisions under division (E)(1) of this section, 431
and the director shall transfer an equal amount from the local 432
government fund to the general revenue fund. 433

(G) A county, township, or municipal corporation receiving 434
an increased distribution under division ~~(B) or (C)~~ (D) of this 435
section shall use such money for the current operating expenses 436
of the subdivision. 437

Section 2. That existing sections 9.63 and 5747.502 of the 438
Revised Code are hereby repealed. 439

Section 3. If any provision of this act or the application 440
of this act to any person or circumstance is held invalid, that 441
invalidity does not affect any other provisions or applications 442
of this act that can be given effect without the invalid 443
provision or application. 444

Section 4. (A) The General Assembly finds that all of the 445
following are true: 446

(1) Sanctuary policies that restrict, obstruct, or 447
discourage cooperation with federal immigration authorities are 448
prohibited by such federal laws as Section 642 of the "Omnibus 449
Consolidated Appropriations Act of 1996," 8 U.S.C. 1373, which 450
states that "a Federal, State, or local government entity or 451
official may not prohibit, or in any way restrict, any 452
government entity or official from sending to, or receiving 453
from, the Immigration and Naturalization Service information 454
regarding the citizenship or immigration status, lawful or 455
unlawful, of any individual." 456

(2) On January 25, 2017, the President of the United States issued an executive order, "Enhancing Public Safety in the Interior of the United States," that addresses sanctuary jurisdictions. The order states that it is the policy of the executive branch of the federal government to ensure that Section 642 of the "Omnibus Consolidated Appropriations Act of 1996," 8 U.S.C. 1373, is enforced to the fullest extent of the law and that the United States Attorney General and Secretary of Homeland Security must ensure that jurisdictions that willfully refuse to comply with that law are ineligible for federal grants, except as the Attorney General or the Secretary deem necessary for law enforcement purposes.

(3) In *Arizona v. United States*, 567 U.S. 387 (2012), the Supreme Court of the United States ruled that the United States Congress has the exclusive authority to legislate on immigration matters, that states may not augment the penalties for violating federal immigration laws, that "consultation between federal and state officials is an important feature of the immigration system," and that "Congress has encouraged the sharing of information about possible immigration violations."

(B) The General Assembly declares all of the following:

(1) Given the supremacy of all federal laws pertaining to immigration, including Section 274 of the "Immigration and Nationality Act," 8 U.S.C. 1324, as amended, which prohibits knowingly harboring persons who are unlawfully present in the United States, it is inappropriate and contrary to the public safety and welfare of this state for any public official to encourage, endorse, or otherwise support any public or private organization that seeks to offer so-called "sanctuary protection" to persons who are unlawfully present in the United

States.	487
(2) Policies that direct state or local employees not to cooperate with federal immigration authorities or that protect persons who are unlawfully present in the United States are contrary to federal law, the interests of this state, and the safety and welfare of the people of this state.	488 489 490 491 492
(3) This act is necessary to ensure consistency and fairness in the enforcement of the laws of this state.	493 494
(4) The subject of this act is a matter of statewide concern.	495 496
Section 5. This act is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for that necessity is that government policies that prohibit cooperation with federal authorities in the enforcement of immigration laws endanger the public safety and welfare. Therefore, this act shall go into immediate effect.	497 498 499 500 501 502 503