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**SENATE BILL 5497**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Wellman, Nguyen, Hasegawa, Kuderer, Frockt, Das, Keiser, Saldaña, Mullet, McCoy, Randall, Cleveland, Hunt, Liias, Conway, and Darneille

AN ACT Relating to establishing a statewide policy supporting Washington state's economy and immigrants' role in the workplace; adding new sections to chapter 43.17 RCW; adding a new section to chapter 43.330 RCW; adding a new section to chapter 43.10 RCW; adding a new section to chapter 10.93 RCW; adding a new section to chapter 72.09 RCW; creating new sections; repealing RCW 10.70.140 and 10.70.150; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that Washington state has a thriving economy that spans both east and west, and encompasses agriculture, food processing, timber, construction, health care, technology, and the hospitality industries.

(2) The legislature also finds that Washington employers rely on a diverse workforce to ensure the economic vitality of the state. Nearly one million Washingtonians are immigrants, which is one out of every seven people in the state. Immigrants make up over sixteen percent of the workforce. In addition, fifteen percent of all business owners in the state were born outside the country, and these business owners have a large impact on the economy through innovation and the creation of jobs. Immigrants make a significant contribution to the economic vitality of this state, and it is essential that the state have policies that recognize their importance to Washington's economy.

(3) In recognition of this significant contribution to the overall prosperity and strength of Washington state, the legislature, therefore, has a substantial and compelling interest in ensuring the state of Washington remains a place where the rights and dignity of all residents are maintained and protected in order to keep Washington working.

NEW SECTION. **Sec.**  A new section is added to chapter 43.17 RCW to read as follows:

The definitions in this section apply throughout this section and sections 3 through 8 of this act unless the context clearly requires otherwise.

(1) "Civil immigration warrant" means any warrant for a violation of federal civil immigration law issued by United States immigration and customs enforcement or United States customs and border protection, and includes, but is not limited to, administrative warrants issued on forms I-200 or I-203, or their successors, and civil immigration warrants entered in the national crime information center database.

(2) "Federal immigration authority" means any officer, employee, or person otherwise paid by or acting as an agent of United States immigration and customs enforcement, also known as "ICE," or United States customs and border protection, also known as "CBP," or any present or future divisions thereof, or any other officer, employee, or person otherwise paid by or acting as an agent of the United States department of homeland security, who is charged with immigration enforcement.

(3) "Health facility" has the same meaning as the term "health care facility" provided in RCW 70.175.020, and includes substance abuse treatment facilities.

(4) "Hold request" means a United States immigration and customs enforcement or United States customs and border protection request, or immigration detainer request, without a judicial warrant, that a state or local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to United States immigration and customs enforcement and includes, but is not limited to, department of homeland security form I-247A or prior or subsequent versions of form I-247.

(5) "Immigration or citizenship status" means a person's recorded citizenship or immigration status, as such status is defined in the immigration and nationality act.

(6) "Judicial warrant" means a warrant based on probable cause and issued by a federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant.

(7) "Language services" includes but is not limited to translation, interpretation, training, or classes. Translation means written communication from one language to another while preserving the intent and essential meaning of the original text. Interpretation means transfer of an oral communication from one language to another.

(8) "Local law enforcement agency" means any agency of a city, county, special district, or other political subdivision of the state that is authorized to enforce criminal statutes, regulations, or local ordinances; or to operate jails or to maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

(9) "Notification request" means a United States immigration and customs enforcement or a United States customs and border protection request that a state or local law enforcement agency inform either agency of the release date and time in advance of the release of an individual in its custody and includes, but is not limited to, the department of homeland security's form I-247A, form I-247N, or prior or subsequent versions of such forms.

(10) "Physical custody of the department of corrections" means only those individuals detained in a state correctional facility but does not include minors detained pursuant to chapter 13.40 RCW, or individuals in community custody pursuant to RCW 9.94A.731 or chapter 72.65 RCW.

(11) "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board and all institutions of higher education as defined in RCW 28B.10.016.

(12) "School resource officer" means any law enforcement officer who contracts with or whose law enforcement agency contracts with any charter school, educational service district, school, school district, or institution of higher education as defined in RCW 28B.10.016 to provide law enforcement services, or any law enforcement officer whose primary responsibility is to provide law enforcement to schools.

(13) "State agency" has the same meaning as provided in RCW 42.56.010.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) A keep Washington working statewide work group is established within the department. The work group must:

(a) Develop strategies with private sector businesses, labor, and immigrant advocacy organizations to support current and future industries across the state;

(b) Conduct research on methods to strengthen career pathways for immigrants and create and enhance partnerships with projected growth industries;

(c) Support business and agriculture leadership, civic groups, government, and immigrant advocacy organizations in a statewide effort to provide predictability and stability to the workforce in the agriculture industry; and

(d) Recommend approaches to improve Washington's ability to attract and retain immigrant business owners that provide new business and trade opportunities.

(2) The work group must consist of eleven representatives, each serving a term of three years, representing members from geographically diverse immigrant advocacy groups, professional associations representing business, labor organizations with a statewide presence, agriculture and immigrant legal interests, faith-based community nonprofit organizations, legal advocacy groups focusing on immigration and criminal justice, academic institutions, and law enforcement. The terms of the members must be staggered. Members of the work group must select a chair from among the membership. The work group must meet at least four times a year and hold meetings in various locations throughout the state. Following each meeting, the work group must report on its status, including meeting minutes and a meeting summary to the department. The department must provide a report to the legislature annually.

(3) In addition to the duties and powers described in RCW 43.330.040, it is the director's duty to provide support to the work group.

(4) The definitions in section 2 of this act apply to this section.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The attorney general, in consultation with appropriate stakeholders, must publish model policies within six months after the effective date of this section for limiting immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, health facilities operated by the state or a political subdivision of the state, courthouses, and shelters, to ensure they remain safe and accessible to all Washington residents, regardless of immigration or citizenship status.

(2) All public schools, health facilities either operated by the state or a political subdivision of the state, and courthouses must:

(a) Adopt necessary changes to policies consistent with the model policy; or

(b) Notify the attorney general that the agency is not adopting the changes to its policies consistent with the model policy, state the reasons that the agency is not adopting the changes, and provide the attorney general with a copy of the agency's policies.

(3) All other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, are encouraged to adopt the model policy.

(4) The definitions in section 2 of this act apply to this section.

(5) Implementation of any policy under this section must be in accordance with state and federal law; policies, grants, waivers, or other requirements necessary to maintain funding; or other agreements related to the operation and functions of the organization, including databases within the organization.

NEW SECTION. **Sec.**  A new section is added to chapter 43.17 RCW to read as follows:

(1) The following state agencies shall review their confidentiality policies and identify any changes necessary to ensure that information collected from individuals is limited to that necessary to perform agency duties and is not used or disclosed for any other purpose. Any necessary changes to those policies shall be made as expeditiously as possible, consistent with agency or department procedures. These policies shall make clear that public employees may not condition services or request information or proof regarding a person's immigration or citizenship status, or place of birth, except as required by law. The policies must also ensure that public services are available to, and public employees shall serve, all Washington residents without regard to immigration or citizenship status. Final policies must be published.

(a) The following departments shall begin implementation within six months after the effective date of this section and demonstrate full compliance by December 1, 2021:

(i) Department of licensing;

(ii) Department of labor and industries;

(iii) Employment security department;

(iv) Department of revenue;

(v) Department of health;

(vi) Health care authority;

(vii) Department of social and health services;

(viii) Department of children, youth, and families;

(ix) Office of the superintendent of public instruction;

(x) State patrol.

(b) The following departments may begin implementation of this section December 1, 2021, and must demonstrate full compliance by December 1, 2023:

(i) Department of agriculture;

(ii) Department of financial institutions;

(iii) Department of fish and wildlife;

(iv) Department of natural resources;

(v) Department of retirement;

(vi) Department of services for the blind;

(vii) Department of transportation.

(2) For any databases operated by state law enforcement agencies, including databases maintained for the agency by private vendors, the attorney general shall, by January 1, 2020, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring that those databases are governed in a manner that limits the availability of information therein, to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement. All state law enforcement agencies must either:

(a) Adopt necessary changes and publish final policies to database governance policies consistent with that guidance; or

(b) Notify the attorney general that the agency is not adopting the changes to its database governance policies consistent with the guidance, state the reasons that the agency is not adopting the changes, and provide the attorney general with a copy of the agency's database governance policies.

NEW SECTION. **Sec.**  A new section is added to chapter 43.17 RCW to read as follows:

No state agency or department, including law enforcement, may use agency or department funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration or citizenship status, or national or ethnic origin. This section does not apply to deidentified or aggregate data, including census data.

NEW SECTION. **Sec.**  A new section is added to chapter 10.93 RCW to read as follows:

(1) The definitions contained in section 2 of this act apply to this section.

(2) For any databases operated by state and local law enforcement agencies, including databases maintained for the agency by private vendors, the attorney general shall, by January 1, 2020, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring that those databases are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement. All state and local law enforcement agencies must either:

(a) Adopt necessary changes to database governance policies consistent with that guidance; or

(b) Notify the attorney general that the agency is not adopting the changes to its database governance policies consistent with the guidance, state the reasons that the agency is not adopting the changes, and provide the attorney general with a copy of the agency's database governance policies.

(3) The legislature finds that it is not the primary purpose of state and local law enforcement agencies, school resource officers, or security departments to enforce civil federal immigration law. The legislature further finds that the immigration status of an individual or an individual's presence in, entry, or reentry to, or employment in the United States alone, is not a matter for police action, and that United States immigration and customs enforcement has primary jurisdiction for enforcement of the provisions of Title 8 U.S.C. dealing with illegal entry.

(4) State and local law enforcement agencies, school resource officers, and security departments may not:

(a) Inquire into or collect information about an individual's immigration or citizenship status, or place of birth; or

(b) Provide information pursuant to notification requests, as defined in this act, from federal immigration authorities, for the purposes of civil immigration enforcement.

(5) State and local law enforcement agencies may not provide nonpublicly available personal information about an individual, including individuals subject to community custody pursuant to RCW 9.94A.701 and 9.94A.702, to federal immigration authorities in a noncriminal matter, except as required by law.

(6)(a) State and local law enforcement agencies may not give federal immigration authorities access to interview individuals about a noncriminal matter while they are in custody, except as required by law.

(b) If permission is granted to United States immigration and customs enforcement or United States customs and border protection, for the purpose of conducting an interview regarding civil immigration violations between either United States immigration and customs enforcement or United States customs and border protection, or both, and the person is in the custody of a state or local law enforcement agency, agency staff shall provide the person with an oral explanation and a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney present. The form shall state explicitly that the person will not be punished or suffer retaliation for declining to be interviewed. The form must be available in English and Spanish and explained orally to a person who is unable to read the form, using, when necessary, an interpreter from the district communications center "language line" or other district resources. United States immigration and customs enforcement or United States customs and border protection officials, must only be permitted to interview persons who have consented in writing to be interviewed, absent a judicial warrant.

(7) An individual may not be detained solely for the purpose of determining immigration status.

(8) An individual must not be taken into custody, or held in custody, solely for the purposes of determining immigration status or based solely on a civil immigration warrant, or an immigration hold request.

(9) An individual must be provided consular notification as required or authorized by treaty or applicable law, regardless of the individual's nationality, citizenship, or immigration status. Prior to consular notification, state and local law enforcement agencies must notify the individual in writing of their right to refuse to disclose their nationality, citizenship, or immigration status and that such disclosure may result in civil or criminal immigration enforcement, including removal from the United States. State and local law enforcement agencies must obtain written consent to disclose national, citizenship, or immigration status prior to consular notification.

(10) A state and local law enforcement agency may not deny services, benefits, privileges, or opportunities to individuals in custody, or under community custody pursuant to RCW 9.94A.701 and 9.94A.702, or probation status, on the basis of the presence of an immigration detainer, hold, notification request, or civil immigration warrant.

(11) No state or local law enforcement officer may enter into any contract, agreement, or arrangement, whether written or oral, that would grant federal civil immigration enforcement authority or powers to state and local law enforcement officers, including but not limited to agreements created under 8 U.S.C. Sec. 1357(g), also known as 287(g) agreements.

(12) No state or local law enforcement agency, school resource officer, or security department may use agency or department facilities, or enter into or renew a contract, agreement, intergovernmental service agreement, or memorandum of understanding, for the purpose of housing or detaining individuals for federal civil immigration authorities. Such contracts, agreements, or memoranda with federal immigration authorities to hold noncitizens in effect prior to January 1, 2019, and under which payments were made since July 1, 2017, may remain in effect until the date of completion or termination.

(13) No state or local law enforcement agency, school resource officer, or security department may enter into or renew a contract for the provision of language services from the United States department of homeland security, United States immigration and customs enforcement, or United States customs and border protection, nor may any language services be accepted from such for free or otherwise.

(14) The provisions of this section do not apply to individuals who are in the physical custody of the department of corrections.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

(1) The definitions contained in section 2 of this act apply to this section.

(2) The provisions of this section apply to individuals in the physical custody of the department.

(3) Prior to an interview with federal immigration authorities, the department shall provide, in writing, information about the right to stay silent and an opportunity for the person in custody to decline to be interviewed by federal immigration authorities, absent a warrant.

(4) An individual must not be taken into custody, or held in custody, solely for the purpose of determining immigration status or based solely on a civil immigration warrant, or an immigration hold request.

(5) An individual must be provided consular notification as required or authorized by treaty or applicable law, regardless of the individual's nationality, citizenship, or immigration status. Prior to consular notification, the department of corrections must notify the individual orally and in writing of their right to refuse to disclose their nationality, citizenship, or immigration status and that such disclosure may result in civil or criminal immigration enforcement, including removal from the United States.

(6) The department must not inquire into or collect information about an individual's immigration or citizenship status, or place of birth.

(7) The department must not deny services, benefits, privileges, or opportunities to individuals, on the basis of the presence of an immigration detainer, hold, notification request, or civil immigration warrant or other communications or requests from the United States immigration and customs enforcement or United States customs and border protection.

(8) Individuals identified by federal immigration authorities to be eligible for early release for deportation pursuant to RCW 9.94A.685 must provide written consent to such early release.

(9) The department must not enter into or renew a contract for the provision of language services from the United States department of homeland security, United States immigration and customs enforcement, or United States customs and border protection, nor may any language services be accepted from such for free or otherwise.

(10) The department must not enter into any contract, agreement, or arrangement, whether written or oral, that would grant federal civil immigration enforcement authority or powers to state law enforcement officers, including but not limited to agreements created under 8 U.S.C. Sec. 1357(g), also known as 287(g) agreements.

(11) The department must not use agency or department facilities or vehicles, or enter into or renew a contract, agreement, intergovernmental service agreement, or memorandum of understanding, for the purpose of transporting, housing, or detaining individuals for federal civil immigration authorities.

NEW SECTION. **Sec.**  In accordance with 8 U.S.C. Sec. 1373, nothing in this act prohibits any state or local agency or officer from sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person, or maintaining such information. Nothing in this act prohibits a state or local agency from exchanging the citizenship or immigration status of an individual with any other federal, state, or local government agency.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 10.70.140 (Aliens committed—Notice to immigration authority) and 1992 c 7 s 29 & 1925 ex.s. c 169 s 1; and

(2)RCW 10.70.150 (Aliens committed—Copies of clerk's records) and 1925 ex.s. c 169 s 2.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**