



2011 ASSEMBLY BILL 173

June 8, 2011 – Introduced by Representatives PRIDEMORE, WYNN, LEMAHIEU, KLEEFISCH, STEINEKE and JACQUE, cosponsored by Senator LASEE. Referred to Committee on Homeland Security and State Affairs.

1 **AN ACT** *to amend* 302.372 (2) (a) (intro.) and 302.372 (3); and *to create* 66.0408
2 and 175.55 of the statutes; **relating to:** local ordinances, determining the
3 lawful presence of a person arrested for or charged with a crime or certain civil
4 violations, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires a law enforcement officer to have a federal agency, or a person authorized by a federal agency, determine whether a person who is arrested for or charged with a crime or civil violation is lawfully present in the state if the officer has reasonable suspicion that the person is not lawfully present. Under the bill, a law enforcement officer may not consider a person's race, color, or national origin except as permitted under the U.S. and the Wisconsin constitutions. The bill states that if a person refuses or fails to provide identification at the time he or she is arrested for or charged with a crime or civil violation, that refusal or failure can give rise to reasonable suspicion that the person is not lawfully present.

Under the bill, a person who cannot prove his or her lawful presence may be held in secured custody for up to 48 hours to allow the person to obtain documentation of his or her lawful presence. The bill specifies the kinds of documentation that are satisfactory to prove lawful presence. Under the bill, no state or local law enforcement officer may verify a person's lawful presence unless he or she has been authorized by the federal government to do so. If the person produces the required documentation, he or she may be released.

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Under the bill, a law enforcement agency must transport a person who cannot produce documentation that he or she is lawfully present to a federal immigration or border patrol agency. Under the bill, this can be done before the person is tried for a crime or, if the person is convicted of a crime, after the person's discharge from jail or prison. The bill allows counties to seek reimbursement for jail costs from a person who was held in secured custody because he or she could not provide proof of lawful presence.

Further, the bill prohibits a city, village, town, or county (political subdivision) from enacting an ordinance, adopting a resolution, or establishing a policy that would prohibit an employee from inquiring whether an individual who receives public services is lawfully present in the state, notifying the federal government of the presence of aliens who are not lawfully present, or acting according to or complying with state law regarding arrested persons who are not lawfully present. Under the bill, a private citizen who believes that a political subdivision is not complying with these requirements may petition for a writ of mandamus requiring compliance, and, if a court finds that a political subdivision has failed to comply, the political subdivision must forfeit \$500 for each day of noncompliance.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0408 of the statutes is created to read:

2 **66.0408 Local ordinances, immigration status, illegal aliens. (1)**

3 DEFINITIONS. In this section:

4 (a) "Illegal alien" means an individual who is not a U.S. citizen and who is not
5 lawfully present in the United States.

6 (b) "Political subdivision" means a city, village, town, or county.

7 (c) "Satisfactory immigration status" means immigration status under which
8 an individual who is not a U.S. citizen is lawfully present in this country.

9 **(2) INQUIRIES ABOUT IMMIGRATION STATUS; REPORTING ILLEGAL ALIENS.** (a) A
10 political subdivision may not enact an ordinance, adopt a resolution, or establish a
11 policy that prohibits an employee of that political subdivision from doing any of the
12 following:

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1 1. Inquiring whether an individual seeking or receiving public services from
2 the political subdivision has satisfactory immigration status.

3 2. Notifying the federal government of the presence of illegal aliens in the
4 political subdivision.

5 3. Acting according to or complying with s. 175.55.

6 (b) If a political subdivision has in effect on the effective date of this paragraph
7 [LRB inserts date], an ordinance or resolution that is inconsistent with par. (a),
8 the ordinance or resolution does not apply and may not be enforced.

9 **(3) PRIVATE RIGHT OF ACTION.** (a) If a resident of this state believes that an
10 employee of a political subdivision is acting in a way that is inconsistent with sub.
11 (2) (a), the resident may file a writ of mandamus with the circuit court of the county
12 in which the activity is alleged to have occurred to compel the political subdivision
13 to comply with sub. (2).

14 (b) If the court finds that the political subdivision has failed to comply with sub.
15 (2) (a), the political subdivision shall forfeit \$500 for each day after the filing of an
16 action under par. (a) that it was noncompliant.

17 **SECTION 2.** 175.55 of the statutes is created to read:

18 **175.55 Determination of lawful presence.** **(1)** In this section, “law
19 enforcement officer” has the meaning given in s. 165.85 (2) (c).

20 **(2)** If a law enforcement officer has reasonable suspicion that a person who is
21 arrested for or charged with a crime or with a violation of state law that may result
22 in the imposition of a fine, forfeiture, or period of imprisonment is not lawfully
23 present in this state, a person authorized under sub. (7) shall determine the lawful
24 presence of the person before the person is released. For the purposes of this
25 subsection, a person’s refusal or failure to provide identification at the time he or she

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1 is arrested for or charged with the crime or the violation may give rise to reasonable
2 suspicion that the person is not lawfully present in this state.

3 **(3)** For the purposes of this section, proof of lawful presence may be any of the
4 following:

5 (a) A U.S. passport.

6 (b) A birth certificate bearing an official seal or other mark of authentication
7 and issued by a state, county, or municipality within the United States or by a
8 territory or possession of the United States.

9 (c) A certification of birth abroad issued by the federal department of state.

10 (d) A certificate of naturalization

11 (e) A certificate of U.S. citizenship.

12 (f) A permanent resident card or alien registration receipt card, along with the
13 person's bureau of citizenship and immigration services alien registration number.

14 (g) Any other proof specified in 49 CFR 383.71 (a) (9), along with the person's
15 bureau of citizenship and immigration services alien registration number.

16 (h) Documentary proof of conditional permanent resident status in the United
17 States.

18 (i) A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry
19 into the United States.

20 (j) An approved application for asylum in the United States or documentary
21 proof that the person has entered into the United States in refugee status.

22 (k) A pending application for asylum in the United States.

23 (L) A pending or approved application for temporary protected status in the
24 United States.

25 (m) An approved deferred action status.

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1 (n) A pending application for adjustment of status to that of an alien lawfully
2 admitted for permanent residence in the United States or conditional permanent
3 resident status in the United States.

4 (o) A valid Wisconsin operator's license or a valid identification card issued
5 under s. 343.50.

6 **(4)** Any person who does not provide proof of his or her lawful presence in this
7 state as provided under sub. (3) may be held in secured custody for no more than 48
8 hours. If the person provides proof of his or her lawful presence during that time,
9 the person may be released. If the person is not being held in secured custody
10 pursuant to another statute and does not provide proof of his or her lawful presence
11 during that time, the law enforcement agency shall proceed under sub. (5).

12 **(5)** The law enforcement agency shall notify the U.S. Immigration and
13 Customs Enforcement or the U.S. Customs and Border Protection that a person who
14 has not provided proof of his or her lawful presence in this state has been identified
15 and shall securely transport the person to a federal facility in this state or to any
16 other point of transfer into federal custody. A law enforcement officer shall obtain
17 judicial authorization before securely transporting a person under this section to a
18 point of transfer that is outside of this state.

19 **(6)** If a person who does not provide proof of his or her lawful presence is
20 convicted of a crime and is imprisoned, upon the person's discharge from jail or from
21 confinement in prison, the sheriff or the department of corrections shall proceed
22 under sub. (5).

23 **(7)** For the purposes of this section, a person's lawful presence may be
24 determined by:

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1 (a) A law enforcement officer who is authorized by the federal government to
2 verify or ascertain a person's immigration status or lawful presence.

3 (b) The U.S. Immigration and Customs Enforcement or the U.S. Customs and
4 Border Protection pursuant to 8 USC 1373 (c).

5 **(8)** A law enforcement officer may not consider race, color, or national origin
6 in the enforcement of this section except to the extent permitted by the U.S. and
7 Wisconsin constitutions.

8 **SECTION 3.** 302.372 (2) (a) (intro.) of the statutes is amended to read:

9 302.372 **(2)** (a) (intro.) Except as provided in pars. (c) and (d), a county may seek
10 reimbursement for any expenses incurred by the county in relation to holding a
11 person in secured custody under s. 175.55 (4) or to the crime for which a person was
12 sentenced to a county jail, or for which the person was placed on probation and
13 confined in jail, as follows:

14 **SECTION 4.** 302.372 (3) of the statutes is amended to read:

15 302.372 **(3)** LIST OF PRISONERS; INFORMATION; REPORTS. Upon request of the
16 district attorney or the corporation counsel for the county, the jailer shall provide the
17 district attorney or corporation counsel with a list containing the name of each
18 person held pursuant to s. 175.55, and each sentenced prisoner or prisoner confined
19 as a condition of probation, the term of sentence or confinement, and the date of
20 admission, together with information regarding the financial status of each prisoner
21 to enable the county to obtain reimbursement under this section.

22 (END)