

2011 DRAFTING REQUEST

Bill

Received: **01/19/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Donald Pridemore (608) 267-2367**

By/Representing: **Bill**

May Contact:

Drafter: **phurley**

Subject: **Criminal Law - miscellaneous
Local Gov't - misc**

Addl. Drafters: **mshovers**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pridemore@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Undocumented residents

Instructions:

09-4746

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/24/2011	csicilia 02/22/2011		_____			S&L
/1	phurley 03/25/2011	csicilia 03/28/2011	rschluet 02/22/2011	_____	sbasford 02/22/2011	mbarman 03/23/2011	S&L
/2			phenry 03/28/2011	_____	lparisi 03/28/2011	lparisi 03/28/2011	S&L
/3	phurley	csicilia	jfrantze	_____	sbasford	sbasford	S&L

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	03/29/2011	03/30/2011	03/30/2011 _____		03/30/2011	03/30/2011	
/4	phurley 05/20/2011	csicilia 05/20/2011	jfrantze 05/20/2011 _____		mbarman 05/20/2011	mbarman 05/20/2011	

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/?	phurley	1/15	1/15				
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Handwritten notes:
1/15
1/15
phurley
mshovers

FE Sent For:

<END>

Hurley, Peggy

From: Rep.Pridemore
Sent: Wednesday, January 19, 2011 2:03 PM
To: Hurley, Peggy
Subject: FW: Draft review: LRB 09-4746/P2 Topic: Undocumented residents
Attachments: LRB-4746_P2; LRB-4746_P2 Drafters_Note

Please put into final form. This should be a go!
Thanks, Bill

From: Rep.Pridemore
Sent: Thursday, August 19, 2010 11:45 AM
To: Savage, Bill; 'bill.savage@charter.net'; 'Don Pridemore'; Pridemore, Don
Subject: FW: Draft review: LRB 09-4746/P2 Topic: Undocumented residents

Jim Bowers
Office of Representative Don Pridemore
jim.bowers@legis.wi.gov
608-267-2367
888-534-0099

From: Duerst, Christina
Sent: Thursday, August 19, 2010 11:39 AM
To: Rep.Pridemore
Subject: Draft review: LRB 09-4746/P2 Topic: Undocumented residents

Following is the PDF version of draft LRB 09-4746/P2 and drafter's note.

Hurley, Peggy

From: Hurley, Peggy
Sent: Wednesday, August 25, 2010 9:41 AM
To: Bowers, Jim
Subject: RE: Summary of LRB 09-4746/P2

Arg, I forgot one:

* 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 legal presence.

From: Bowers, Jim
Sent: Wednesday, August 25, 2010 9:40 AM
To: Hurley, Peggy
Subject: RE: Summary of LRB 09-4746/P2

Thank you very much Peggy

Jim Bowers
Office of Representative Don Pridemore
jim.bowers@legis.wi.gov
608-267-2367
888-534-0099

From: Hurley, Peggy
Sent: Wednesday, August 25, 2010 9:39 AM
To: Bowers, Jim
Subject: Summary of LRB 09-4746/P2

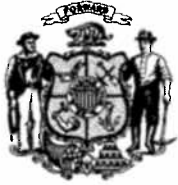
Hi Jim,

You asked me to provide a "bullet point" summary of the bill I drafted for you. LRB 09-4746/P2 does the following:

- * Requires a law enforcement officer to determine whether a person who is arrested for or charged with a crime or civil violation is legally present in the state IF the officer has reasonable suspicion that the person is not legally present.
- * Allows a person who cannot prove his or her legal presence to be held in secured custody for up to 48 hours to allow the person to obtain documentation of his or her legal presence. If the person produces the required documentation, he or she may be released.
- * Requires the law enforcement agency to transport a person who cannot produce documentation that he or she is legally 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.
- * Establishes that a state or local law enforcement officer must be authorized by the federal government to verify a person's legal presence.

- * Establishes that 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.
- * Prohibits a political subdivision (a city, town, village, or county) from passing an ordinance, adopting a resolution, or establishing a policy that would prohibit an employee from doing any of the following:
 - * Inquiring whether an individual who receives public services is legally present in the state.
 - * Notifying the federal government of the presence of aliens who are not legally present.
 - * Acting contrary to or failing to comply with state law regarding arrested persons who are not legally present.

Peggy Hurley
Legislative Reference Bureau
608 266 8906



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to create* 175.55 of the statutes; **relating to:** determining the legal
2 presence of a person arrested for or charged with a crime or certain civil
3 violations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

4 SECTION 1. 175.55 of the statutes is created to read:

5 **175.55 Determination of legal presence.** (1) In this section, "law
6 enforcement officer" has the meaning given in s. 165.85 (2) (c).

7 (2) If a law enforcement officer has reasonable suspicion that a person who is
8 arrested for or charged with a crime or with a violation of state law that may result
9 in the imposition of a fine, forfeiture, or period of imprisonment is not legally present
10 in this state, a person authorized under sub. (6) shall determine the legal presence
11 of the person before the person is released.

1 **(3)** For the purposes of this section, proof of legal presence may be any of the
2 following:

3 (a) A U.S. passport.

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

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

8 (d) A certificate of naturalization

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

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

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

14 (h) Documentary proof of conditional permanent resident status in the United
15 States.

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

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

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

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

23 (m) An approved deferred action status.

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.

 ****NOTE: These are taken from the requirements to obtain drivers' licenses in Wisconsin.

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

 ****NOTE: I did not include, in this draft, any provisions for a person being required to pay the costs of his or her jail time. I am not sure if you intend for a person who is legally present to pay these costs, or what happens if a person who is not legally present either does not or cannot pay. Please review and let me know your thoughts on this matter.

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

 ****NOTE: The question of whether the federal agency will take custody of persons who have not proven their legal presence is unsettled. This draft, like the Arizona law, is silent as to what should happen if the federal agency refuses to take custody of the person. You may want to review this issue with the department of justice and let me know if you would like the draft to address this possibility.

17 **(6)** If a person who does not provide proof of his or her legal presence is
18 convicted of a crime and is imprisoned, upon the person's discharge from jail or from

1 confinement in prison, the sheriff or the department of corrections shall proceed
2 under sub. (5).

****NOTE: Under this subsection, a person who has not proven his or her legal presence is, upon release from jail or confinement in prison, taken to federal custody. However, persons released from confinement in prison are generally released to extended supervision in Wisconsin; they are still technically serving their “term of imprisonment” under Wisconsin law and are under the jurisdiction of the department of corrections. I am not sure if and how, under this subsection, the department of corrections may release a person from his or her term of imprisonment before the period of extended supervision is completed. You may want to discuss this with the department of justice and the department of corrections for clarification of this point.

3 **(7)** For the purposes of this section, a person’s legal presence may be
4 determined by:

5 (a) A law enforcement officer who is authorized by the federal government to
6 verify or ascertain a person’s immigration status or legal presence.

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

****NOTE: The language in sub. (7) is taken from Arizona HB 2162. I am not sure if this means that *only* law enforcement officers who have obtained federal authorization may verify legal presence or what type of training/education law enforcement officers may be required to undergo in order to obtain federal authorization.

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

****NOTE: The language in sub. (8) is taken from Arizona HB 2162.

****NOTE: This draft does not include language that would prohibit political subdivisions from enacting a policy or ordinance that limits the enforcement of immigration law. After subsequent discussions about this draft, I believe that those provisions exceed the scope of your request. Please let me know if you do want me to include language to that effect in the next draft.

12

(END)

Hurley, Peggy

From: Hurley, Peggy
Sent: Wednesday, August 11, 2010 3:05 PM
To: Savage, Bill
Subject: RE: Prohibiting sanctuary cities
Okay, will do!

From: Savage, Bill
Sent: Wednesday, August 11, 2010 2:49 PM
To: Hurley, Peggy
Subject: RE: Prohibiting sanctuary cities

Include the \$500 per day damages.
Thanks,

From: Hurley, Peggy
Sent: Wed 8/11/2010 12:08 PM
To: Savage, Bill
Subject: Prohibiting sanctuary cities

Hi Bill,

I am attaching a copy of a 2007 bill that Representative Pridemore co-sponsored. The bill prohibits local governments from establishing "sanctuary cities" and allows a private right of action that would compel the city to comply with the law. The bill does not include liquidated damages, however. When we had our discussion last week, the question of a \$500 or even \$1000/day damages award came up and it was unclear to me whether Representative Pridemore thinks they are necessary for his bill. Do you want me to simply incorporate this 2007 bill into your draft, or should we go with the monetary damages, as well?

Peggy Hurley
Legislative Reference Bureau
608 266 8906

Pls include the drafting file
from LRB 09-4746 in this
request's file.

PSH

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN


(Request Made By: PJH) (Date: 02 / 22 / 2011)

Note:


**BOTH DRAFTS SHOULD HAVE THE
SAME "REQUESTOR"**


(exception: companion bills)



 Please transfer the drafting file for
2009 LRB -4746 (For: Rep. Sen. Pridemore)
to the drafting file for
2011 LRB -1116 (For: Rep. Sen. Pridemore)

----- **OR** -----

 Please copy the drafting file for
2011 LRB _____ / _____ (include the version) (For: Rep. / Sen. _____)
and place it in the drafting file for
2011 LRB _____ (For: Rep. / Sen. _____)

 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history
("guts") from the original file: _____



1116/1

Am
MVR
MES

gjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

P.W.F.
yes

1-24-11

SA 09 ✓
SA 11 ✓

Insert analysis

Gen Cat

local ordinances
and lawful

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: determining the legal presence of a
3 person arrested for or charged with a crime or certain civil violations, and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

5 SECTION 1. 66.0408 of the statutes is created to read:
6 **66.0408 Local ordinances, immigration status, illegal aliens. (1)**
7 DEFINITIONS. In this section:
8 (a) "Illegal alien" means an individual who is not a U.S. citizen and who is not
9 lawfully present in the United States.
10 (b) "Political subdivision" means a city, village, town, or county.

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

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

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

9 2. Notifying the federal government of the presence of illegal aliens in the
10 political subdivision.

11 3. Acting contrary to or failing to comply with s. 175.55.

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

15 (3) PRIVATE RIGHT OF ACTION. (a) If a political subdivision fails to comply with
16 sub. (2) (a), a person who is a legal resident of this state may file a writ of mandamus
17 with the circuit court for the county where the failure occurred to compel the
18 noncomplying political subdivision to comply with the requirements of sub. (2) (a)

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2-16

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

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

23 175.55 Determination of legal presence. (1) In this section, "law
24 enforcement officer" has the meaning given in s. 165.85 (2) (c).

7

lawfully

legally present

lawful

lawful

1 (2) If a law enforcement officer has reasonable suspicion that a person who is
2 arrested for or charged with a crime or with a violation of state law that may result
3 in the imposition of a fine, forfeiture, or period of imprisonment is not legally present
4 in this state, a person authorized under sub. (6) shall determine the legal presence
5 of the person before the person is released.

6 (3) For the purposes of this section, proof of legal presence may be any of the
7 following:

- 8 (a) A U.S. passport.
- 9 (b) A birth certificate bearing an official seal or other mark of authentication
10 and issued by a state, county, or municipality within the United States or by a
11 territory or possession of the United States.
- 12 (c) A certification of birth abroad issued by the federal department of state.
- 13 (d) A certificate of naturalization
- 14 (e) A certificate of U.S. citizenship.
- 15 (f) A permanent resident card or alien registration receipt card, along with the
16 person's bureau of citizenship and immigration services alien registration number.
- 17 (g) Any other proof specified in 49 CFR 383.71 (a) (9), along with the person's
18 bureau of citizenship and immigration services alien registration number.
- 19 (h) Documentary proof of conditional permanent resident status in the United
20 States.
- 21 (i) A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry
22 into the United States.
- 23 (j) An approved application for asylum in the United States or documentary
24 proof that the person has entered into the United States in refugee status.
- 25 (k) A pending application for asylum in the United States.

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

3 (m) An approved deferred action status.

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

7 (4) Any person who does not provide proof of his or her legal presence in this lawful 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 legal presence during that time, the
9 person may be released. If the person is not being held in secured custody pursuant
10 to another statute and does not provide proof of his or her legal presence during that
11 time, the law enforcement agency shall proceed under sub. (5). lawful

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

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

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

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

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:

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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)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1116/?ins
.....

LPS: Please
change to proper
analysis components

INSERT ANALYSIS:

This bill requires a law enforcement officer to 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 specifies the kinds of documentation that ^{are} satisfactory to prove lawful presence and requires ^e that a state or local law enforcement officer to be authorized by the federal government to verify a person's lawful presence.

Under the bill, a person who cannot prove his or her lawful presence may be held in secured custody for up to forty-eight hours to allow the person to obtain documentation of his or her lawful presence. If the person produces the required documentation, he or she may be released.

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 ~~passing~~ ^{enacting} an ordinance, adopting a resolution, or establishing a policy that would prohibit an employee from inquiring whether an individual who receives public

2011-2012 DRAFTING INSERT
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LEGISLATIVE REFERENCE BUREAU

-1116/1
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PJH&MES.....

INS 2-18

WJH

(a) If a resident of this state believes that an employee of a political subdivision is acting in a way that is inconsistent with sub. (2) (a), the resident may file a writ of mandamus with the circuit court of the county in which the activity is alleged to have occurred to compel the political subdivision to comply with sub. (2).

services is lawfully present in the state, notifying the federal government of the presence of aliens who are not lawfully present, or otherwise acting contrary to or failing to comply 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 requires the political entity to forfeit \$500 a day for noncompliance.

Handwritten notes:
 - A line from "otherwise" points to "government".
 - "requires" is circled.
 - "entity" is circled.
 - "to" is circled.
 - "a day" is circled.
 - "noncompliance." is circled.
 - "each day of" is written below "noncompliance."
 - "subdivision" is written below "entity".
 - "I must" is written above "to".

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

Handwritten note:
 ^ if a court finds that a political subdivision has failed to comply ^

Basford, Sarah

From: Savage, Bill
Sent: Wednesday, March 23, 2011 1:19 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1116/1 Topic: Undocumented residents

Please Jacket LRB 11-1116/1 for the ASSEMBLY.



2

stays

2011 BILL

3-25-11
soon

SA ✓

Ben Cat

Insert
analysis

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 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 specifies the kinds of documentation that are satisfactory to prove lawful presence and requires a state or local law enforcement officer to be authorized by the federal government to verify a person's lawful presence.

MOVED

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. If the person produces the required documentation, he or she may be released.

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BILL

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 contrary to or failing to comply 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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14 the political subdivision has satisfactory immigration status.

BILL

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

3 3. Acting contrary to or failing to comply with s. 175.55.

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

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

12 (b) If the court finds that the political subdivision has failed to comply with sub.
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14 action under par. (a) that it was noncompliant.

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18 (2) If a law enforcement officer has reasonable suspicion that a person who is
19 arrested for or charged with a crime or with a violation of state law that may result
20 in the imposition of a fine, forfeiture, or period of imprisonment is not lawfully
21 present in this state, a person authorized under sub. (7) shall determine the lawful
22 presence of the person before the person is released.

Insert 322

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

25 (a) A U.S. passport.

BILL

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

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

5 (d) A certificate of naturalization

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

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

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12 States.

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22 admitted for permanent residence in the United States or conditional permanent
23 resident status in the United States.

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

BILL

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

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

14 (6) If a person who does not provide proof of his or her lawful presence is
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BILL

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17 to enable the county to obtain reimbursement under this section.

18 (END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1116/lins
PJH&MES:cjs:rs

INSERT ANALYSIS:

no 11

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, that refusal or failure can give rise to the reasonable suspicion required to detain a person.

or civil violation

INSERT 3.22:

that the person is not lawfully present

For the purposes of this subsection, a person's refusal or failure to provide identification at the time he or she is arrested for or charged with a crime may give rise to reasonable suspicion that the person is not lawfully in this state.

the

present

or the violation



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1116/2
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3
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Slays

2011 BILL

SAW

54
3-30-11
Gen Cat

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BILL

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*according to or complying
complying*

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BILL

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BILL

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BILL

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BILL

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21 to enable the county to obtain reimbursement under this section.

22 (END)

Hurley, Peggy

From: Pusch, Liz
Sent: Friday, May 20, 2011 9:05 AM
To: Hurley, Peggy
Subject: LRB 1116/3

Hi Peggy,

In regards to LRB 1116/3, Rep. Pridemore would like to include the following:

The bill should state, in clear language, that it is not the role of local law enforcement to determine the immigration status of any individual unless that officer is acting in his or her capacity as a sworn officer of the law while investigating a crime or has reasonable suspicion that a crime has occurred or is being committed.

I will be sending the jacket back over to you.

Rep. Pridemore was hoping to get this back late morning/early afternoon.

Thank you!

Liz Pusch
Office of Rep. Don Pridemore
Liz.Pusch@legis.wisconsin.gov
(608) 267-2367

t/c w. Rep Pridemore - keep in civil,
change analysis to make it
more clear that local, i.e. can't look
into legal presence w/o federal
authorization.



Stays

Mr

2011 BILL

By noon today

St ✓

Under the bill, no state or local law enforcement officer may verify a person's lawful presence unless he or she has been

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2 and 175.55 of the statutes; relating to: local ordinances, determining the
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BILL

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BILL

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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)