




State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment VI

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-4746 (For: Rep. Pridemore)


has been transferred to the drafting file for

2011 LRB-1116 (For: Rep. Pridemore)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 02/22/2011 (Per: PJH)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

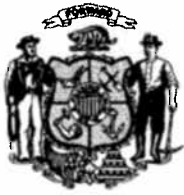
Q

8-5-10 Mtg w/ Rep Prodemores etc

- also include local entities not passing contrary legislation
- add in the private rt of action from AZ law (see p. 5 of Q)
- look at gun law pre-emption

- p. 3, (4) If legally present, no jail fees.
- If not legally present, just add in that they should pay under 301?
- give counties authority to collect jail ~~fee~~ costs - already in stats

Q
A



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Insert 1A
then
1B
8-12-10
d-note

1 AN ACT *to create* ^{re-gen} 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 ⁶ and 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:

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)

Insert 2

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4746/P1dn
PJH:kjf:ph

2

Date

Representative Pridemore:

Please review this draft to ensure it is consistent with your intent. Please note that this draft incorporates part of 2007 SB 309, which sought to prohibit political subdivisions from passing any ordinance, resolution, or policy that prohibits an employee of the subdivision from inquiring about a person's legal status or informing the federal government that a person is illegally present. This draft expands those provisions to prohibit a political subdivision from acting contrary to or failing to comply with the requirement that officers determine the legal presence of a person arrested for or charged with a violation of a law. This draft also allows a private citizen to petition for a writ of mandamus requiring compliance and requires the political entity to forfeit \$500 a day for non-compliance.

X

The draft retains the provisions that allows only those law enforcement officers who are authorized by the federal government to verify legal status. According to Ann Morse of NCSL, this provision was designed to allow local law enforcement agencies to cooperate with the federal government and receive specialized training in document identification. Please let me know if you want me to remove that language.

stays

X

This draft also allows counties to seek reimbursement for the cost of jailing persons who are unable to prove their legal presence. Please review and let me know if it does reflect your intent.

not

X

As always, please let me know if you have any questions or comments, or would like more information on any part of this draft. I look forward to hearing from you.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

SENATE BILL 309

Insert 2 - 1A

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

2 DEFINITIONS. In this section:

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

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

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

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

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

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

or failing to comply with
3. Acting contrary to S. 175.55,

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

19 (3) PRIVATE RIGHT OF ACTION. If an elector of this state is aggrieved by the failure
20 of a political subdivision to comply with the requirements of sub. (2) (a), the elector
21 may file a writ of mandamus with the circuit court for the county where the failure
22 to comply with sub. (2) (a) occurred to compel the noncomplying political subdivision
23 to comply with the requirements.

24 (END)

insert 1B

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4746/P1ins
PJH:kjf:ph

INSERT 1B:

~~SECTION 1. 66.0408 (3) of the statutes is created to read:~~

~~66.0408~~ (3) PRIVATE RIGHT OF ACTION. (a) If a political subdivision fails to comply with sub. (2) (a), a person who is a legal resident of this state may file a writ of mandamus with the circuit court for the county where the failure occurred to compel the noncomplying political subdivision to comply with the requirements.

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

INSERT 2:

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

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

History: 1995 a. 281; 1997 a. 191; 1999 a. 32; 2007 a. 20.

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

302.372 (3) LIST OF PRISONERS; INFORMATION; REPORTS. Upon request of the district attorney or the corporation counsel for the county, the jailer shall provide the district attorney or corporation counsel with a list containing the name of each person held pursuant to s. 175.55, and each sentenced prisoner or prisoner confined as a condition of probation, the term of sentence or confinement, and the date of

admission, together with information regarding the financial status of each prisoner to enable the county to obtain reimbursement under this section.

History: 1995 a. 281; 1997 a. 191; 1999 a. 32; 2007 a. 20.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4746/P2dn
PJH:kjf:md

August 19, 2010

Representative Pridemore:

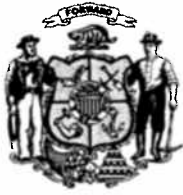
Please review this draft to ensure it is consistent with your intent. Please note that this draft incorporates part of 2007 SB 309, which sought to prohibit political subdivisions from passing any ordinance, resolution, or policy that prohibits an employee of the subdivision from inquiring about a person's legal status or informing the federal government that a person is illegally present. This draft expands those provisions to prohibit a political subdivision from acting contrary to or failing to comply with the requirement that officers determine the legal presence of a person arrested for or charged with a violation of a law. This draft also allows a private citizen to petition for a writ of mandamus requiring compliance and requires the political entity to forfeit \$500 a day for noncompliance.

The draft retains the provision that allows only those law enforcement officers who are authorized by the federal government to verify legal status. According to Ann Morse of NCSL, this provision was designed to allow local law enforcement agencies to cooperate with the federal government and receive specialized training in document identification. Please let me know if you want me to remove that language.

This draft also allows counties to seek reimbursement for the cost of jailing persons who are unable to prove their legal presence. Please review and let me know if it does not reflect your intent.

As always, please let me know if you have any questions or comments, or would like more information on any part of this draft. I look forward to hearing from you.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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.

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).

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

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.

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).

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

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