



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)