REFERENCE TITLE: sanctuary jurisdiction; liability; civil action

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2598

Introduced by Representatives Roberts: Allen J, Barto, Biasucci, Blackman, Bolick, Bowers, Campbell, Carroll, Cobb, Cook, Dunn, Fillmore, Finchem, Grantham, Griffin, Kavanagh, Kern, Lawrence, Nutt, Osborne, Payne, Petersen, Pierce, Rivero, Shope, Thorpe, Toma, Townsend, Udall, Weninger, Senators Leach, Mesnard

AN ACT

AMENDING SECTION 11-1051, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 7, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-1052; RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-1051, Arizona Revised Statutes, is amended to read:

11-1051. Cooperation and assistance in enforcement of immigration laws; indemnification; immigration detainers; civil penalties

A. No AN official or agency of this state or a county, city, town or other political subdivision of this state may NOT limit or restrict the enforcement of federal immigration laws to less than the full extent permitted ALLOWED by federal law.

B. For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person's immigration status determined before the person is released. The person's immigration status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted ALLOWED by the United States or Arizona Constitution. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid Arizona driver license.
2. A valid Arizona nonoperating identification license.
3. A valid tribal enrollment card or other form of tribal identification.
4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

C. If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or on the assessment of any monetary obligation that is imposed, the United States immigration and customs enforcement or the United States customs and border protection shall be immediately notified.

D. Notwithstanding any other law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement
agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside of this state.

E. In the implementation of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 United States Code section 1373(c).

F. OFFICIALS AND AGENCIES OF THIS STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS STATE, INCLUDING LAW ENFORCEMENT OFFICERS, SHALL COMPLY WITH A VALID IMMIGRATION DETAINER THAT IS REQUESTED BY THE FEDERAL GOVERNMENT OR AN AUTHORIZED AGENT OF THE FEDERAL GOVERNMENT. AN OFFICIAL, AN AGENCY OR A LAW ENFORCEMENT OFFICER THAT INTENTIONALLY OR KNOWINGLY FAILS TO COMPLY WITH A VALID IMMIGRATION DETAINER THAT IS ISSUED FOR A PERSON WHO IS DETAINED OR INCARCERATED BY THE OFFICIAL, AGENCY OR LAW ENFORCEMENT OFFICER IS SUBJECT TO A CIVIL PENALTY. IF THE ATTORNEY GENERAL OR COUNTY ATTORNEY FINDS CAUSE TO BELIEVE THAT AN ENTITY IS VIOLATING THIS SUBSECTION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL COMMENCE AN ACTION IN SUPERIOR COURT.

G. Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

1. Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state.

2. Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state.

3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality act.


H. This section does not implement, authorize or establish and shall not be construed to implement, authorize or establish the REAL ID act of 2005 (P.L. 109-13, division B; 119 Stat. 302), including the use of a radio frequency identification chip.

I. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state
or a county, city, town or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code sections 1373 and 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than five hundred dollars AT LEAST $500 and not more than five thousand dollars $5,000 for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

I. A court shall collect the civil penalty prescribed in subsection H of this section and remit the civil penalty to the state treasurer for deposit in the gang and immigration intelligence team enforcement mission fund established by section 41-1724.

J. The court may award court costs and reasonable attorney fees to any person or any official or agency of this state or a county, city, town or other political subdivision of this state that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

K. Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

L. This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

Sec. 2. Title 11, chapter 7, article 8, Arizona Revised Statutes, is amended by adding section 11-1052, to read:

11-1052. Sanctuary jurisdiction liability; crime victim damages; notice to state treasurer; incarceration costs; definitions

A. NOTWITHSTANDING SECTION 12-820.02, AN INDIVIDUAL, OR THE SPOUSE, PARENT OR CHILD OF THE INDIVIDUAL IF THE INDIVIDUAL IS DECEASED OR PERMANENTLY INCAPACITATED, MAY BRING AN ACTION FOR DAMAGES AGAINST A CITY, TOWN, COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT IS A SANCTUARY JURISDICTION IF ALL OF THE FOLLOWING APPLY:

1. THE INDIVIDUAL IS THE VICTIM OF MURDER, SEXUAL ASSAULT OR ANY OTHER FELONY.

2. AN ALIEN WAS ARRESTED, CONVICTED AND SENTENCED TO A TERM OF IMPRISONMENT FOR AT LEAST ONE YEAR FOR THE MURDER, SEXUAL ASSAULT OR OTHER FELONY.
3. WITHIN TEN YEARS BEFORE THE OFFENSE OCCURRED, THE CITY, TOWN, COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE INTENTIONALLY OR KNOWINGLY FAILED TO EITHER:
   (a) COMPLY WITH BOTH OF THE FOLLOWING:
      (i) A LAWFUL REQUEST WITH RESPECT TO THE ALIEN BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY UNDER THE IMMIGRATION AND NATIONALITY ACT (66 STAT. 163; 8 UNITED STATES CODE SECTIONS 1226 AND 1357).
      (ii) A DETAINER FOR, OR NOTIFY ABOUT THE RELEASE OF, THE ALIEN.
   (b) CONTACT THE FEDERAL GOVERNMENT TO DETERMINE THE IMMIGRATION STATUS OF THE ALIEN IF REQUIRED PURSUANT TO SECTION 11-1051, SUBSECTION B.
   B. THE COURT SHALL AWARD THE PREVAILING PARTY COSTS AND REASONABLE ATTORNEY FEES.
   D. FOR THE PURPOSES OF THIS SECTION:
   1. "ALIEN" MEANS AN INDIVIDUAL WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES AS DETERMINED BY THE FEDERAL GOVERNMENT OR BY A PERSON WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO MAKE THE DETERMINATION.
   2. "SANCTUARY JURISDICTION" MEANS A CITY, TOWN, COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT HAS IN EFFECT AN ORDINANCE, POLICY, RULE OR PRACTICE THAT PROHIBITS OR RESTRICTS ANY GOVERNMENT ENTITY OR OFFICIAL FROM EITHER:
      (a) SENDING, RECEIVING, MAINTAINING OR EXCHANGING WITH ANY FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS OF ANY ALIEN.
      (b) COMPLYING WITH A LAWFUL REQUEST BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY PURSUANT TO THE IMMIGRATION AND NATIONALITY ACT (66 STAT. 163; 8 UNITED STATES CODE SECTIONS 1226 AND 1357) TO COMPLY WITH A DETAINER FOR, OR NOTIFY ABOUT THE RELEASE OF, AN ALIEN.