

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, Biasiucci, 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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 11-1051. Cooperation and assistance in enforcement of  
5 immigration laws; indemnification; immigration  
6 detainers; civil penalties

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

11 B. For any lawful stop, detention or arrest made by a law  
12 enforcement official or a law enforcement agency of this state or a law  
13 enforcement official or a law enforcement agency of a county, city, town  
14 or other political subdivision of this state in the enforcement of any  
15 other law or ordinance of a county, city or town or this state where  
16 reasonable suspicion exists that the person is an alien and is unlawfully  
17 present in the United States, a reasonable attempt shall be made, when  
18 practicable, to determine the immigration status of the person, except if  
19 the determination may hinder or obstruct an investigation. Any person who  
20 is arrested shall have the person's immigration status determined before  
21 the person is released. The person's immigration status shall be verified  
22 with the federal government pursuant to 8 United States Code section  
23 1373(c). A law enforcement official or agency of this state or a county,  
24 city, town or other political subdivision of this state may not consider  
25 race, color or national origin in implementing the requirements of this  
26 subsection except to the extent ~~permitted~~ ALLOWED by the United States or  
27 Arizona Constitution. A person is presumed to not be an alien who is  
28 unlawfully present in the United States if the person provides to the law  
29 enforcement officer or agency any of the following:

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

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

42 D. Notwithstanding any other law, a law enforcement agency may  
43 securely transport an alien who the agency has received verification is  
44 unlawfully present in the United States and who is in the agency's custody  
45 to a federal facility in this state or to any other point of transfer into  
46 federal custody that is outside the jurisdiction of the law enforcement

1 agency. A law enforcement agency shall obtain judicial authorization  
2 before securely transporting an alien who is unlawfully present in the  
3 United States to a point of transfer that is outside of this state.

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

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

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

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

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

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

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

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

39 4. Pursuant to 8 United States Code section 1373 and 8 United  
40 States Code section 1644.

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

45 ~~H.~~ I. A person who is a legal resident of this state may bring an  
46 action in superior court to challenge any official or agency of this state

1 or a county, city, town or other political subdivision of this state that  
2 adopts or implements a policy that limits or restricts the enforcement of  
3 federal immigration laws, including 8 United States Code sections 1373 and  
4 1644, to less than the full extent ~~permitted~~ ALLOWED by federal law. If  
5 there is a judicial finding that an entity has violated this section, the  
6 court shall order that the entity pay a civil penalty of ~~not less than~~  
7 ~~five hundred dollars~~ AT LEAST \$500 and not more than ~~five thousand dollars~~  
8 \$5,000 for each day that the policy has remained in effect after the  
9 filing of an action pursuant to this subsection.

10 ~~i.~~ J. A court shall collect the civil ~~penalty~~ PENALTIES prescribed  
11 in ~~subsection H of~~ this section and remit the civil ~~penalty~~ PENALTIES to  
12 the state treasurer for deposit in the gang and immigration intelligence  
13 team enforcement mission fund established by section 41-1724.

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

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

26 ~~l.~~ M. This section shall be implemented in a manner consistent  
27 with federal laws regulating immigration, protecting the civil rights of  
28 all persons and respecting the privileges and immunities of United States  
29 citizens.

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

32 11-1052. Sanctuary jurisdiction liability; crime victim  
33 damages; notice to state treasurer; incarceration  
34 costs; definitions

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

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

42 2. AN ALIEN WAS ARRESTED, CONVICTED AND SENTENCED TO A TERM OF  
43 IMPRISONMENT FOR AT LEAST ONE YEAR FOR THE MURDER, SEXUAL ASSAULT OR OTHER  
44 FELONY.

1           3. WITHIN TEN YEARS BEFORE THE OFFENSE OCCURRED, THE CITY, TOWN,  
2 COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE INTENTIONALLY OR  
3 KNOWINGLY FAILED TO EITHER:

4           (a) COMPLY WITH BOTH OF THE FOLLOWING:

5           (i) A LAWFUL REQUEST WITH RESPECT TO THE ALIEN BY THE UNITED STATES  
6 DEPARTMENT OF HOMELAND SECURITY UNDER THE IMMIGRATION AND NATIONALITY ACT  
7 (66 STAT. 163; 8 UNITED STATES CODE SECTIONS 1226 AND 1357).

8           (ii) A DETAINER FOR, OR NOTIFY ABOUT THE RELEASE OF, THE ALIEN.

9           (b) CONTACT THE FEDERAL GOVERNMENT TO DETERMINE THE IMMIGRATION  
10 STATUS OF THE ALIEN IF REQUIRED PURSUANT TO SECTION 11-1051, SUBSECTION B.

11           B. THE COURT SHALL AWARD THE PREVAILING PARTY COSTS AND REASONABLE  
12 ATTORNEY FEES.

13           C. IF A CITY, TOWN, COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS  
14 STATE IS FOUND RESPONSIBLE PURSUANT TO THIS SECTION, THE CLERK OF THE  
15 COURT IN WHICH THE LEGAL PROCEEDINGS ARE HELD SHALL NOTIFY THE STATE  
16 TREASURER OF THE JUDGMENT. THE STATE TREASURER SHALL PREPARE AN ITEMIZED  
17 CLAIM AGAINST THE CITY, TOWN, COUNTY OR OTHER POLITICAL SUBDIVISION OF  
18 THIS STATE FOR THE ALIEN'S INCARCERATION COSTS IN THE STATE DEPARTMENT OF  
19 CORRECTIONS AS A RESULT OF THE CRIMINAL CASE. THE CLAIM SHALL BE SENT TO  
20 THE CITY, TOWN, COUNTY OR OTHER POLITICAL SUBDIVISION OF THIS STATE FOR  
21 PAYMENT. ON RECEIPT OF THE CERTIFIED CLAIM, THE CITY, TOWN, COUNTY OR  
22 OTHER POLITICAL SUBDIVISION OF THIS STATE SHALL PAY THE STATE TREASURER.  
23 THE STATE TREASURER SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND.

24           D. FOR THE PURPOSES OF THIS SECTION:

25           1. "ALIEN" MEANS AN INDIVIDUAL WHO IS UNLAWFULLY PRESENT IN THE  
26 UNITED STATES AS DETERMINED BY THE FEDERAL GOVERNMENT OR BY A PERSON WHO  
27 IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO MAKE THE DETERMINATION.

28           2. "SANCTUARY JURISDICTION" MEANS A CITY, TOWN, COUNTY OR OTHER  
29 POLITICAL SUBDIVISION OF THIS STATE THAT HAS IN EFFECT AN ORDINANCE,  
30 POLICY, RULE OR PRACTICE THAT PROHIBITS OR RESTRICTS ANY GOVERNMENT ENTITY  
31 OR OFFICIAL FROM EITHER:

32           (a) SENDING, RECEIVING, MAINTAINING OR EXCHANGING WITH ANY FEDERAL,  
33 STATE OR LOCAL GOVERNMENT ENTITY INFORMATION REGARDING THE CITIZENSHIP OR  
34 IMMIGRATION STATUS OF ANY ALIEN.

35           (b) COMPLYING WITH A LAWFUL REQUEST BY THE UNITED STATES DEPARTMENT  
36 OF HOMELAND SECURITY PURSUANT TO THE IMMIGRATION AND NATIONALITY ACT (66  
37 STAT. 163; 8 UNITED STATES CODE SECTIONS 1226 AND 1357) TO COMPLY WITH A  
38 DETAINER FOR, OR NOTIFY ABOUT THE RELEASE OF, AN ALIEN.