

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2162

AN ACT

AMENDING SECTIONS 1-501 AND 1-502, ARIZONA REVISED STATUTES; AMENDING SECTION 11-1051, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 2, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; MAKING AN APPROPRIATION; RELATING TO IMMIGRATION AND BORDER SECURITY; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 1-501, Arizona Revised Statutes, is amended to
3 read:

4 1-501. Eligibility for federal public benefits; documentation;
5 violation; classification; citizen suits; attorney
6 fees; definition

7 A. Notwithstanding any other state law and to the extent permitted by
8 federal law, any person who applies for a federal public benefit that is
9 administered by this state or a political subdivision of this state and that
10 requires participants to be citizens of the United States, legal residents of
11 the United States or otherwise lawfully present in the United States shall
12 submit at least one of the following documents to the entity that administers
13 the federal public benefit demonstrating lawful presence in the United
14 States:

- 15 1. An Arizona driver license issued after 1996 or an Arizona
16 nonoperating identification license.
- 17 2. A birth certificate or delayed birth certificate issued in any
18 state, territory or possession of the United States.
- 19 3. A United States certificate of birth abroad.
- 20 4. A United States passport.
- 21 5. A foreign passport with a United States visa.
- 22 6. An I-94 form with a photograph.
- 23 7. A United States citizenship and immigration services employment
24 authorization document or refugee travel document.
- 25 8. A United States certificate of naturalization.
- 26 9. A United States certificate of citizenship.
- 27 10. A tribal certificate of Indian blood.
- 28 11. A tribal or bureau of Indian affairs affidavit of birth.

29 B. For the purposes of administering the Arizona health care cost
30 containment system, documentation of citizenship and legal residence shall
31 conform with the requirements of title XIX of the social security act.

32 C. To the extent permitted by federal law, an agency of this state or
33 political subdivision of this state may allow tribal members, the elderly and
34 persons with disabilities or incapacity of the mind or body to provide
35 documentation as specified in section 6036 of the federal deficit reduction
36 act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu
37 of the documentation required by this section.

38 D. Any person who applies for federal public benefits shall sign a
39 sworn affidavit stating that the documents presented pursuant to subsection A
40 **OF THIS SECTION** are true under penalty of perjury.

41 E. Failure to report discovered violations of federal immigration law
42 by an employee of an agency of this state or a political subdivision of this
43 state that administers any federal public benefit is a class 2 misdemeanor.
44 If that employee's supervisor knew of the failure to report and failed to

1 direct the employee to make the report, the supervisor is guilty of a class 2
2 misdemeanor.

3 F. This section shall be enforced without regard to race, color,
4 religion, sex, age, disability or national origin.

5 G. Any person who is a resident of this state has standing in any
6 court of record to bring suit against any agent or agency of this state or
7 its political subdivisions to remedy any violation of any provision of this
8 section, including an action for mandamus. Courts shall give preference to
9 actions brought under this section over other civil actions or proceedings
10 pending in the court.

11 H. NOTWITHSTANDING SECTION 12-348, IN ACTIONS BROUGHT PURSUANT TO THIS
12 SECTION, THE PREVAILING PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES.

13 ~~H.~~ I. For the purposes of this section, "federal public benefit" has
14 the same meaning prescribed in 8 United States Code section 1611.

15 Sec. 2. Section 1-502, Arizona Revised Statutes, is amended to read:

16 1-502. Eligibility for state or local public benefits;
17 documentation; violation; classification; citizen
18 suits; attorney fees; definition

19 A. Notwithstanding any other state law and to the extent permitted by
20 federal law, any agency of this state or a political subdivision of this
21 state that administers any state or local public benefit shall require each
22 NATURAL person who applies for the state or local public benefit to submit at
23 least one of the following documents to the entity that administers the state
24 or local public benefit demonstrating lawful presence in the United States:

25 1. An Arizona driver license issued after 1996 or an Arizona
26 nonoperating identification license.

27 2. A birth certificate or delayed birth certificate issued in any
28 state, territory or possession of the United States.

29 3. A United States certificate of birth abroad.

30 4. A United States passport.

31 5. A foreign passport with a United States visa.

32 6. An I-94 form with a photograph.

33 7. A United States citizenship and immigration services employment
34 authorization document or refugee travel document.

35 8. A United States certificate of naturalization.

36 9. A United States certificate of citizenship.

37 10. A tribal certificate of Indian blood.

38 11. A tribal or bureau of Indian affairs affidavit of birth.

39 B. For the purposes of administering the Arizona health care cost
40 containment system, documentation of citizenship and legal residence shall
41 conform with the requirements of title XIX of the social security act.

42 C. To the extent permitted by federal law, an agency of this state or
43 political subdivision of this state may allow tribal members, the elderly and
44 persons with disabilities or incapacity of the mind or body to provide
45 documentation as specified in section 6036 of the federal deficit reduction

1 act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu
2 of the documentation required by this section.

3 D. Any person who applies for state or local public benefits shall
4 sign a sworn affidavit stating that the documents presented pursuant to
5 subsection A OF THIS SECTION are true under penalty of perjury.

6 E. Failure to report discovered violations of federal immigration law
7 by an employee of an agency of this state or a political subdivision of this
8 state that administers any state or local public benefit is a class 2
9 misdemeanor. If that employee's supervisor knew of the failure to report and
10 failed to direct the employee to make the report, the supervisor is guilty of
11 a class 2 misdemeanor.

12 F. This section shall be enforced without regard to race, color,
13 religion, sex, age, disability or national origin.

14 G. Any person who is a resident of this state has standing in any
15 court of record to bring suit against any agent or agency of this state or
16 its political subdivisions to remedy any violation of any provision of this
17 section, including an action for mandamus. Courts shall give preference to
18 actions brought under this section over other civil actions or proceedings
19 pending in the court.

20 H. NOTWITHSTANDING SECTION 12-348, IN ACTIONS BROUGHT PURSUANT TO THIS
21 SECTION, THE PREVAILING PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES.

22 ~~H.~~ I. For the purposes of this section, "state or local public
23 benefit" ~~has the same meaning prescribed in 8 United States Code section~~
24 ~~1621, except that it does not include commercial or professional licenses or~~
25 ~~benefits provided by the public retirement systems and plans of this state~~
26 MEANS, EXCEPT FOR BENEFITS PROVIDED PURSUANT TO FEDERAL LAW, RULE, REGULATION
27 OR GUIDANCE, CONTRACTS, GRANTS OR LOANS FOR WELFARE, HEALTH, DISABILITY,
28 PUBLIC OR ASSISTED HOUSING, POSTSECONDARY EDUCATION, FOOD ASSISTANCE OR OTHER
29 SIMILAR BENEFIT FOR WHICH PAYMENTS OR ASSISTANCE ARE PROVIDED TO AN
30 INDIVIDUAL, HOUSEHOLD OR FAMILY ELIGIBILITY UNIT BY AN AGENCY OF A STATE OR
31 LOCAL GOVERNMENT OR BY APPROPRIATED MONIES OF A STATE OR LOCAL GOVERNMENT.
32 STATE OR LOCAL PUBLIC BENEFIT DOES NOT INCLUDE SERVICES WIDELY AVAILABLE TO
33 THE GENERAL POPULATION AS A WHOLE.

34 Sec. 3. Section 11-1051, Arizona Revised Statutes, as added by Senate
35 Bill 1070, section 2, forty-ninth legislature, second regular session, as
36 transmitted to the governor, is amended to read:

37 11-1051. Cooperation and assistance in enforcement of
38 immigration laws; indemnification

39 A. No official or agency of this state or a county, city, town or
40 other political subdivision of this state may limit or restrict the
41 enforcement of federal immigration laws to less than the full extent
42 permitted by federal law.

43 B. For any lawful contact made by a law enforcement official or a law
44 enforcement agency of this state or a law enforcement official or a law
45 enforcement agency of a county, city, town or other political subdivision of

1 this state where reasonable suspicion exists that the person is an alien who
2 is unlawfully present in the United States, a reasonable attempt shall be
3 made, when practicable, to determine the immigration status of the person,
4 except if the determination may hinder or obstruct an investigation. Any
5 person who is arrested shall have the person's immigration status determined
6 before the person is released. The person's immigration status shall be
7 verified with the federal government pursuant to 8 United States code section
8 1373(c). A law enforcement official or agency of this state or a county,
9 city, town or other political subdivision of this state may not solely
10 consider race, color or national origin in implementing the requirements of
11 this subsection except to the extent permitted by the United States or
12 Arizona Constitution. A person is presumed to not be an alien who is
13 unlawfully present in the United States if the person provides to the law
14 enforcement officer or agency any of the following:

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

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

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

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

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

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

4 3. If the person is an alien, determining whether the person is in
5 compliance with the federal registration laws prescribed by title II, chapter
6 7 of the federal immigration and Nationality act.

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

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

13 G. A person who is a legal resident of this state may bring an action
14 in superior court to challenge any official or agency of this state or a
15 county, city, town or other political subdivision of this state that adopts
16 or implements a policy ~~or practice~~ that limits or restricts the enforcement
17 of federal immigration laws to less than the full extent permitted by federal
18 law. If there is a judicial finding that an entity has violated this
19 section, the court shall order that the entity pay a civil penalty of not
20 less than ~~one thousand~~ FIVE HUNDRED dollars and not more than five thousand
21 dollars for each day that the policy has remained in effect after the filing
22 of an action pursuant to this subsection.

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

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

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

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

42 Sec. 4. Arizona border security commission; membership; duties;
43 report; delayed repeal

44 A. The Arizona border security commission is established consisting of
45 the following members:

- 1 1. The governor, or the governor's designee, who serves as chairperson
2 of the commission.
- 3 2. The president of the senate or the president's designee.
- 4 3. The speaker of the house of representatives or the speaker's
5 designee.
- 6 4. Two members of the house of representatives who are appointed by
7 the speaker of the house of representatives.
- 8 5. Two members of the senate who are appointed by the president of the
9 senate.
- 10 6. The adjutant general or the adjutant general's designee.
- 11 7. The attorney general.
- 12 8. The director of the department of public safety or the director's
13 designee.
- 14 9. The director of the Arizona department of homeland security or the
15 director's designee.
- 16 10. The president of an association of county sheriffs or the
17 president's designee.
- 18 11. The president of an association of county attorneys or the
19 president's designee.
- 20 12. A representative from the United States customs and border
21 protection.
- 22 13. A representative from the federal bureau of investigation.
- 23 14. A representative of a chiefs' of police association.
- 24 15. A representative from the civil air patrol.
- 25 16. A representative from a city that is adjacent to the United States
26 and Mexico border who is appointed by the governor.
- 27 B. Commission members are not eligible to receive compensation but are
28 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
29 article 2, Arizona Revised Statutes.
- 30 C. The commission shall meet monthly and shall:
 - 31 1. Report on the status of the United States and Mexico border.
 - 32 2. Analyze border crossing statistics.
 - 33 3. Analyze related crime statistics. The commission shall measure
34 border security success by comparing the monthly number and severity of
35 illegal alien caused burglaries, home invasions and ranching infrastructure
36 or livestock losses. The commission shall devise and recommend a procedure
37 to disclose these statistics and the commission's analysis to residents of
38 counties in this state that are adjacent to the United States-Mexico border.
 - 39 4. Make recommendations on methods and procedures to increase border
40 security.
 - 41 5. Recommend the establishment of twelve forward operating bases along
42 the United States-Mexico border beginning east of an Indian reservation that
43 is adjacent to the United States-Mexico border and continuing to the
44 Arizona-New Mexico state line and urge the federal government and the state

1 of New Mexico to add additional forward operating bases along the United
2 States-Mexico border that is located in the state of New Mexico.

3 6. Recommend to the appropriate federal authority:

4 (a) The immediate deployment of operational units of the United States
5 military to the United States-Mexico border within this state to secure the
6 border and to provide for the safety of citizens of this state.

7 (b) The addition of at least three thousand border patrol agents on or
8 before December 31, 2011 to be deployed in this state.

9 (c) On or before December 31, 2010, expediting the deployment of new
10 generation digital radio technology to border patrol agents who are deployed
11 in this state and the state of New Mexico.

12 (d) A substantial increase in the border patrol recon 3, MSS/Radar and
13 FLIR mobile surveillance units and appropriate operational personnel along
14 the United States-Mexico border that is located in this state.

15 7. Urge the governor to deploy Arizona national guard units to the
16 United States-Mexico border that is located in this state.

17 8. Analyze and report on any fraudulent procurement of public benefits
18 by illegal aliens in this state.

19 D. The commission may use the services of legislative staff as
20 required.

21 E. Beginning October 1, 2010 and each month thereafter, the commission
22 shall submit a written report of its findings and recommendations to the
23 speaker of the house of representatives and the president of the senate. The
24 commission shall provide a copy of the report to the secretary of state.

25 F. This section is repealed from and after December 31, 2014.

26 Sec. 5. Appropriation; border security; use of GIITEM monies

27 A. Of the monies appropriated to the department of public safety for
28 the gang and immigration intelligence team enforcement mission in fiscal year
29 2010-2011, the sum of \$200,000 shall be distributed to the Cochise county
30 sheriff's office for border security, including the costs of equipment
31 related to a pilot program to dispatch a volunteer security force to the
32 United States-Mexico border.

33 B. The director of the department of public safety shall use monies
34 appropriated to the department of public safety for the gang and immigration
35 intelligence team enforcement mission for the purpose of directing department
36 of public safety officers to Cochise county for the purpose of securing the
37 United States-Mexico border or to establish a pilot program for this purpose.

38 Sec. 6. Conditional enactment

39 Section 11-1051, Arizona Revised Statutes, as amended by this act, does
40 not become effective unless Senate Bill 1070, forty-ninth legislature, second
41 regular session, relating to unlawfully present aliens, becomes law.