

Senate Engrossed House Bill

~~lawful presence; e-verify program; penalties~~
(now: border; benefits; fentanyl; illegal entry)

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE CONCURRENT RESOLUTION 2060

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING
TO RESPONSES TO HARMS RELATED TO AN UNSECURED BORDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona,
2 the Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,
4 the following measure, relating to responses to harms related to an
5 unsecured border, is enacted to become valid as a law if approved by the
6 voters and on proclamation of the Governor:

7 AN ACT

8 AMENDING TITLE 1, CHAPTER 5, ARTICLE 1, ARIZONA REVISED
9 STATUTES, BY ADDING SECTIONS 1-503 AND 1-504; AMENDING TITLE
10 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTION
11 13-3424; AMENDING TITLE 13, CHAPTER 38, ARIZONA REVISED
12 STATUTES, BY ADDING ARTICLE 35; AMENDING TITLE 23, CHAPTER 2,
13 ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-215;
14 RELATING TO RESPONSES TO HARMS RELATED TO AN UNSECURED
15 BORDER.

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

17 Section 1. Short title

18 This act may be cited as the "Secure the Border Act".

19 Sec. 2. Findings and declaration of purpose

20 A. The people of the State of Arizona find and declare
21 as follows:

22 1. Due to weaknesses in immigration enforcement, a
23 public safety crisis is occurring in Arizona, caused by
24 transnational cartels engaging in rampant human trafficking
25 and drug smuggling across this state's southern border.

26 2. From 2021 to 2023, United States Customs and Border
27 Protection encountered nearly seven million immigrants
28 illegally entering the United States through the southwest
29 border. This number does not include an estimated two million
30 "gotaways" who evaded encounters with border officials
31 entirely.

32 3. From 2021 to 2023, United States Customs and Border
33 Protection encountered two hundred eighty-two individuals on
34 the terrorist watchlist illegally entering the southwest
35 border between ports of entry. This is a 3033% increase over
36 the prior three years when only nine such individuals were
37 encountered.

38 4. From 2021 to 2023, the number of unaccompanied
39 minors illegally crossing the southwest border skyrocketed to
40 over four hundred thousand. Studies have shown that a
41 majority of these children are victims of human trafficking.

42 5. From 2021 to 2023, the amount of fentanyl seized at
43 the southwest border almost tripled, amounting to billions of
44 doses of fentanyl. Illicit fentanyl, which is primarily
45 produced in foreign nations and smuggled across the southwest

1 border, is a synthetic opioid fifty times stronger than
2 heroin. Even a single dose can be lethal. Synthetic opioids
3 like fentanyl have now become the leading cause of overdose
4 deaths in the United States. Transnational cartels fund their
5 operations by trafficking this deadly drug across the
6 southwest border.

7 6. In 2022, the Arizona Department of Health Services
8 reported that illicit fentanyl is primarily responsible for an
9 increasing number of overdose deaths in Arizona and that
10 opioid overdose data demonstrates the continued urgency to
11 address the drug overdose crisis in Arizona through
12 comprehensive and collaborative approaches.

13 7. Many individuals who enter the United States
14 unlawfully are enticed by smugglers with promises of economic
15 incentives, including employment and taxpayer-funded benefits.
16 Human smuggling is a gateway crime for additional offenses,
17 including identity theft, document fraud and benefit fraud,
18 harming Arizona taxpayers. Unchecked and unauthorized
19 employment causes economic hardship to Arizona workers who may
20 face unfair labor competition, wage suppression and reduced
21 working conditions or opportunities.

22 8. A holistic approach is required to deter human
23 trafficking and drug smuggling into Arizona by:

- 24 (a) Empowering law enforcement to protect the public.
- 25 (b) Reducing the incentives for illegal immigration.
- 26 (c) Punishing criminals who fuel the crisis at
27 Arizona's southern border.

28 B. Based on the facts outlined in subsection A of this
29 section, the state of Arizona is being "actually invaded" as
30 defined in article I, section 10 of the United States
31 Constitution. The determination of invasion made in this
32 subsection may only be revoked by referendum or by legislation
33 that is duly enacted by the legislature and signed by the
34 governor.

35 C. Based on these findings, the people of Arizona's
36 purpose in adopting the Secure the Border Act includes
37 protecting the public and responding to the harms related to
38 an unsecured border by:

39 1. Empowering law enforcement to protect the public by
40 arresting aliens who fail to enter Arizona's southern border
41 through official ports of entry.

42 2. Reducing the incentive for illegal immigration by
43 creating criminal offenses for a person to knowingly present
44 false documents to obtain public benefits or to evade
45 workplace eligibility detection through the e-verify program.

1 3. Strengthening Arizona's laws that require
2 documentation of a person's lawful presence in the United
3 States in order to receive public benefits by requiring
4 agencies and political subdivisions of this state to use the
5 systematic alien verification for entitlements program to
6 verify benefit eligibility and validity of documents for
7 people who are not citizens or nationals of the United States.

8 4. Increasing punishments for criminals who fuel the
9 crisis at the southern border by selling fentanyl that causes
10 the death of another person.

11 Sec. 3. Title 1, chapter 5, article 1, Arizona Revised
12 Statutes, is amended by adding sections 1-503 and 1-504, to
13 read:

14 1-503. Federal, state and local public benefits; false
15 documents; violation; classification;
16 definitions

17 A. NOTWITHSTANDING ANY OTHER STATE LAW AND TO THE
18 EXTENT ALLOWED BY FEDERAL LAW, ANY NATURAL PERSON WHO IS NOT
19 LAWFULLY PRESENT IN THE UNITED STATES SHALL NOT KNOWINGLY
20 APPLY FOR A FEDERAL PUBLIC BENEFIT OR A STATE OR LOCAL PUBLIC
21 BENEFIT BY SUBMITTING A FALSE DOCUMENT TO ANY ENTITY THAT
22 ADMINISTERS THE FEDERAL PUBLIC BENEFIT OR THE STATE OR LOCAL
23 PUBLIC BENEFIT.

24 B. ANY NATURAL PERSON WHO VIOLATES SUBSECTION A OF THIS
25 SECTION IS GUILTY OF A CLASS 6 FELONY.

26 C. FOR THE PURPOSES OF THIS SECTION:

27 1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING
28 PRESCRIBED IN SECTION 1-501.

29 2. "STATE OR LOCAL PUBLIC BENEFIT" HAS THE SAME MEANING
30 PRESCRIBED IN SECTION 1-502.

31 1-504. Document verification; applicants for public
32 benefits; definitions

33 A. IF A PERSON WHO APPLIES FOR ANY FEDERAL PUBLIC
34 BENEFIT PURSUANT TO SECTION 1-501 OR ANY STATE OR LOCAL PUBLIC
35 BENEFIT PURSUANT TO SECTION 1-502 IS NOT A CITIZEN OR NATIONAL
36 OF THE UNITED STATES, THE AGENCY OR POLITICAL SUBDIVISION OF
37 THIS STATE THAT ADMINISTERS THE PUBLIC BENEFIT SHALL USE THE
38 SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM THAT IS
39 MAINTAINED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION
40 SERVICES, OR ANY SUCCESSOR PROGRAM THAT IS DESIGNATED BY THE
41 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IN ORDER TO
42 VERIFY THE VALIDITY OF THE DOCUMENTS PROVIDED BY THE APPLICANT
43 AND TO VERIFY THE APPLICANT'S ELIGIBILITY FOR BENEFITS.

1 B. THIS SECTION DOES NOT RELIEVE A PERSON OF ANY
2 REQUIREMENT TO SUBMIT DOCUMENTATION THAT IS REQUIRED FOR ANY
3 FEDERAL PUBLIC BENEFIT PURSUANT TO SECTION 1-501 OR ANY STATE
4 OR LOCAL PUBLIC BENEFIT PURSUANT TO SECTION 1-502.

5 C. FOR THE PURPOSES OF THIS SECTION:

6 1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING
7 PRESCRIBED IN SECTION 1-501.

8 2. "STATE OR LOCAL PUBLIC BENEFIT" HAS THE SAME MEANING
9 AS PRESCRIBED IN SECTION 1-502.

10 Sec. 4. Title 13, chapter 34, Arizona Revised Statutes,
11 is amended by adding section 13-3424, to read:

12 13-3424. Sale of lethal fentanyl; affirmative defense;
13 classification

14 A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE
15 COMMITS SALE OF LETHAL FENTANYL IF THE PERSON KNOWINGLY SELLS
16 FENTANYL IN VIOLATION OF SECTION 13-3408, SUBSECTION A,
17 PARAGRAPH 7 AND BOTH OF THE FOLLOWING APPLY:

18 1. THE PERSON KNOWS THAT THE DRUG BEING SOLD CONTAINS
19 FENTANYL.

20 2. THE FENTANYL CAUSES THE DEATH OF ANOTHER PERSON.

21 B. IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE BROUGHT
22 UNDER THIS SECTION THAT THE FENTANYL AND ITS PRECURSOR
23 CHEMICALS WERE EITHER MANUFACTURED IN THE UNITED STATES OR
24 WERE LAWFULLY IMPORTED INTO THE UNITED STATES.

25 C. SALE OF LETHAL FENTANYL IS A CLASS 2 FELONY, EXCEPT
26 THAT THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCES SHALL BE
27 INCREASED BY FIVE YEARS.

28 Sec. 5. Title 13, chapter 38, Arizona Revised Statutes,
29 is amended by adding article 35, to read:

30 ARTICLE 35. ILLEGAL ENTRY INTO THIS STATE

31 13-4295. Definitions

32 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

33 1. "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR
34 NATIONAL OF THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES
35 CODE SECTION 1101.

36 2. "PORT OF ENTRY" MEANS A PORT OF ENTRY IN THE UNITED
37 STATES AS DESCRIBED IN 19 CODE OF FEDERAL REGULATIONS SECTION
38 101.1.

39 13-4295.01. Illegal entry from foreign nation;
40 affirmative defense; classification

41 A. IT IS UNLAWFUL FOR A PERSON WHO IS AN ALIEN TO ENTER
42 OR ATTEMPT TO ENTER THIS STATE DIRECTLY FROM A FOREIGN NATION
43 AT ANY LOCATION OTHER THAN A LAWFUL PORT OF ENTRY.

44 B. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF
45 SUBSECTION A OF THIS SECTION IF ANY OF THE FOLLOWING APPLIES:

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1. THE FEDERAL GOVERNMENT HAS GRANTED THE DEFENDANT
LAWFUL PRESENCE IN THE UNITED STATES OR ASYLUM UNDER 8 UNITED
STATES CODE SECTION 1158.

2. THE DEFENDANT'S CONDUCT DOES NOT CONSTITUTE A
VIOLATION OF 8 UNITED STATES CODE SECTION 1325(a).

3. THE DEFENDANT WAS APPROVED FOR BENEFITS UNDER THE
DEFERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM BETWEEN JUNE
15, 2012 AND JULY 16, 2021, UNLESS THE PROGRAM IS CANCELED OR
A FEDERAL COURT HAS ISSUED A FINAL ORDER DETERMINING THAT THE
PROGRAM IS UNLAWFUL AND ANY APPEALS OF THAT ORDER HAVE BEEN
EXHAUSTED.

C. AN ALIEN LACKS LAWFUL PRESENCE UNDER THIS SECTION IF
THE ALIEN WAS EITHER:

1. PAROLED PURSUANT TO A PROGRAMMATIC GRANT OF PAROLE,
INCLUDING UNDER ANY PAROLE PROGRAM NOT CREATED UNDER
NOTICE-AND-COMMENT RULEMAKING THAT ESTABLISHES SPECIFIC
CHARACTERISTICS UNDER WHICH AN ALIEN WOULD BE ENTITLED TO
PAROLE AND THAT HAS BEEN APPLIED TO MORE THAN ONE HUNDRED
ALIENS DURING ONE CALENDAR YEAR.

2. REQUIRED TO BE DETAINED UNDER THE IMMIGRATION AND
NATIONALITY ACT BUT WAS NOT DETAINED AND INSTEAD WAS PAROLED
INTO THE UNITED STATES.

D. A VIOLATION OF THIS SECTION IS A CLASS 1
MISDEMEANOR, EXCEPT THAT IT IS A CLASS 6 FELONY IF THE PERSON
HAS BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS
SECTION. THE PERSON IS NOT ELIGIBLE FOR PROBATION, PARDON,
COMMUTATION OR SUSPENSION OF SENTENCE OR RELEASE ON ANY OTHER
BASIS UNTIL THE PERSON HAS SERVED A TERM OF INCARCERATION AS
DETERMINED BY THE COURT.

13-4295.02. Refusal to comply with order to return to a
foreign nation; classification

A. A PERSON WHO IS AN ALIEN COMMITS REFUSAL TO COMPLY
WITH AN ORDER TO RETURN TO A FOREIGN NATION IF ALL OF THE
FOLLOWING OCCUR:

1. THE PERSON IS CHARGED WITH OR CONVICTED OF AN
OFFENSE UNDER THIS ARTICLE.

2. A COURT, AS APPLICABLE, ISSUES AN ORDER PURSUANT TO
SECTION 13-4295.03 FOR THE PERSON TO RETURN TO THE FOREIGN
NATION FROM WHICH THE PERSON ENTERED OR ATTEMPTED TO ENTER THE
UNITED STATES.

3. THE PERSON REFUSES TO COMPLY WITH THE ORDER.

B. A VIOLATION OF THIS SECTION IS A CLASS 4 FELONY.

1 13-4295.03. Order to return to foreign nation

2 A. AT ANY TIME BEFORE A PERSON IS CONVICTED OF OR
3 ADJUDICATED FOR A VIOLATION OF SECTION 13-4295.01, A COURT MAY
4 DISMISS THE CHARGE PENDING AGAINST THE PERSON AND ISSUE A
5 WRITTEN ORDER IN ACCORDANCE WITH SUBSECTION B OF THIS SECTION.

6 B. A WRITTEN ORDER AUTHORIZED BY SUBSECTION A OF THIS
7 SECTION SHALL DISCHARGE THE PERSON AND REQUIRE THE PERSON TO
8 RETURN TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR
9 ATTEMPTED TO ENTER THE UNITED STATES AND MAY BE ISSUED IF ALL
10 OF THE FOLLOWING APPLY:

11 1. THE PERSON AGREES TO THE ORDER.

12 2. THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN
13 OFFENSE UNDER THIS ARTICLE OR PREVIOUSLY OBTAINED A DISCHARGE
14 UNDER AN ORDER ISSUED PURSUANT TO THIS SECTION.

15 3. THE PERSON IS NOT CHARGED WITH ANOTHER CLASS 1
16 MISDEMEANOR OR ANY FELONY OFFENSE.

17 4. BEFORE THE ISSUANCE OF THE ORDER, THE ARRESTING LAW
18 ENFORCEMENT AGENCY DOES BOTH OF THE FOLLOWING:

19 (a) COLLECTS ALL IDENTIFYING INFORMATION OF THE PERSON,
20 WHICH MUST INCLUDE TAKING FINGERPRINTS FROM THE PERSON AND
21 USING OTHER APPLICABLE PHOTOGRAPHIC AND BIOMETRIC MEASURES TO
22 IDENTIFY THE PERSON.

23 (b) CROSS-REFERENCES THE COLLECTED INFORMATION WITH ALL
24 RELEVANT LOCAL, STATE AND FEDERAL CRIMINAL DATABASES AND
25 FEDERAL LISTS OR CLASSIFICATIONS THAT ARE USED TO IDENTIFY A
26 PERSON AS A THREAT OR POTENTIAL THREAT TO NATIONAL SECURITY.

27 C. ON CONVICTION OF AN OFFENSE UNDER THIS ARTICLE, THE
28 JUDGE SHALL ENTER AN ORDER THAT REQUIRES THE PERSON TO RETURN
29 TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR
30 ATTEMPTED TO ENTER THE UNITED STATES. AN ORDER ISSUED UNDER
31 THIS SUBSECTION TAKES EFFECT ON COMPLETION OF ANY TERM OF
32 INCARCERATION OR IMPRISONMENT.

33 D. AN ORDER THAT IS ISSUED UNDER THIS SECTION MUST
34 INCLUDE AN AUTHORIZATION THAT ALLOWS A STATE OR LOCAL LAW
35 ENFORCEMENT AGENCY TO TRANSPORT THE PERSON TO A PORT OF ENTRY
36 OR TO ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY.

37 13-4295.04. Enforcement of article

38 NOTWITHSTANDING ANY OTHER LAW, THIS ARTICLE MAY NOT BE
39 ENFORCED IN ANY MANNER UNTIL ANY PART OF SECTION 2 OF S.B. 4,
40 88TH LEG., 4TH CALLED SESS. (2023) THAT WAS ENACTED IN THE
41 STATE OF TEXAS, OR ANY OTHER LAW OF ANY OTHER STATE SIMILAR
42 THERETO, HAS BEEN IN EFFECT FOR A PERIOD OF SIXTY CONSECUTIVE
43 DAYS AT ANY TIME ON OR AFTER THE EFFECTIVE DATE OF THIS
44 ARTICLE.

1 allowed to file a lawsuit or intervene in any action
2 concerning this act if the individual seeks to defend the
3 constitutionality, validity or enforceability of this act.

4 B. Any settlement of a lawsuit challenging this act
5 cannot be entered before service of a twenty-one-day notice to
6 the president of the senate, speaker of the house of
7 representatives, minority leader of the senate and minority
8 leader of the house of representatives. The failure to comply
9 with this subsection shall invalidate the settlement and
10 constitutes a violation of section 38-443, Arizona Revised
11 Statutes.

12 Sec. 8. Severability

13 If a provision of this act or its application to any
14 person or circumstance is held invalid, the invalidity does
15 not affect other provisions or applications of the act that
16 can be given effect without the invalid provision or
17 application, and to this end the provisions of this act are
18 severable.

19 2. The Secretary of State shall submit this proposition to the
20 voters at the next general election as provided by article IV, part 1,
21 section 1, Constitution of Arizona.