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

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

AN ACT

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

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

Section 1. Short title

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

Sec. 2. Findings and declaration of purpose

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

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

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

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

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

5. From 2021 to 2023, the amount of fentanyl seized at the southwest border almost tripled, amounting to billions of doses of fentanyl. Illicit fentanyl, which is primarily produced in foreign nations and smuggled across the southwest border, ...
border, is a synthetic opioid fifty times stronger than heroin. Even a single dose can be lethal. Synthetic opioids like fentanyl have now become the leading cause of overdose deaths in the United States. Transnational cartels fund their operations by trafficking this deadly drug across the southwest border.

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

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

8. A holistic approach is required to deter human trafficking and drug smuggling into Arizona by:
   (a) Empowering law enforcement to protect the public.
   (b) Reducing the incentives for illegal immigration.
   (c) Punishing criminals who fuel the crisis at Arizona's southern border.

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

C. Based on these findings, the people of Arizona's purpose in adopting the Secure the Border Act includes protecting the public and responding to the harms related to an unsecured border by:
   1. Empowering law enforcement to protect the public by arresting aliens who fail to enter Arizona's southern border through official ports of entry.
   2. Reducing the incentive for illegal immigration by creating criminal offenses for a person to knowingly present false documents to obtain public benefits or to evade workplace eligibility detection through the e-verify program.
3. Strengthening Arizona's laws that require documentation of a person's lawful presence in the United States in order to receive public benefits by requiring agencies and political subdivisions of this state to use the systematic alien verification for entitlements program to verify benefit eligibility and validity of documents for people who are not citizens or nationals of the United States.

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

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

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

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

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

C. FOR THE PURPOSES OF THIS SECTION:


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

A. IF A NATURAL PERSON WHO APPLIES FOR ANY FEDERAL PUBLIC BENEFIT PURSUANT TO SECTION 1-501 OR ANY STATE OR LOCAL PUBLIC BENEFIT PURSUANT TO SECTION 1-502 IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES, THE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE THAT ADMINISTERS THE PUBLIC BENEFIT SHALL USE THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM THAT IS MAINTAINED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, OR ANY SUCCESSOR PROGRAM THAT IS DESIGNATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IN ORDER TO VERIFY THE VALIDITY OF THE DOCUMENTS PROVIDED BY THE APPLICANT AND TO VERIFY THE APPLICANT'S ELIGIBILITY FOR BENEFITS.
B. THIS SECTION DOES NOT RELIEVE A NATURAL PERSON OF
ANY REQUIREMENT TO SUBMIT DOCUMENTATION THAT IS REQUIRED FOR
ANY FEDERAL PUBLIC BENEFIT PURSUANT TO SECTION 1-501 OR ANY
STATE OR LOCAL PUBLIC BENEFIT PURSUANT TO SECTION 1-502.
C. FOR THE PURPOSES OF THIS SECTION:
1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING
PRESCRIBED IN SECTION 1-501.
2. "STATE OR LOCAL PUBLIC BENEFIT" HAS THE SAME MEANING
AS PRESCRIBED IN SECTION 1-502.
Sec. 4. Title 13, chapter 34, Arizona Revised Statutes,
is amended by adding section 13-3424, to read:
13-3424. Sale of lethal fentanyl; affirmative defense;
classification
A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE
COMMITS SALE OF LETHAL FENTANYL IF THE PERSON KNOWINGLY SELLS
FENTANYL IN VIOLATION OF SECTION 13-3408, SUBSECTION A,
PARAGRAPH 7 AND BOTH OF THE FOLLOWING APPLY:
1. THE PERSON KNOWS THAT THE DRUG BEING SOLD CONTAINS
FENTANYL.
2. THE FENTANYL CAUSES THE DEATH OF ANOTHER PERSON.
B. IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE BROUGHT
UNDER THIS SECTION THAT THE FENTANYL AND ITS PRECURSOR
CHEMICALS WERE EITHER MANUFACTURED IN THE UNITED STATES OR
WERE LAWFULLY IMPORTED INTO THE UNITED STATES.
C. SALE OF LETHAL FENTANYL IS A CLASS 2 FELONY, EXCEPT
THAT THE PRESumptive, MINIMUM AND MAXIMUM SENTENCES SHALL BE
INCREASED BY FIVE YEARS.
Sec. 5. Title 13, chapter 38, Arizona Revised Statutes,
is amended by adding article 35, to read:
ARTICLE 35. ILLEGAL ENTRY INTO THIS STATE
13-4295. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR
NATIONAL OF THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES
CODE SECTION 1101.
2. "PORT OF ENTRY" MEANS A PORT OF ENTRY IN THE UNITED
STATES AS DESCRIBED IN 19 CODE OF FEDERAL REGULATIONS SECTION
101.1.
13-4295.01. Illegal entry from foreign nation;
affirmative defense; probable cause to
arrest; prospective applicability;
classification
A. IT IS UNLAWFULL FOR A PERSON WHO IS AN ALIEN TO ENTER
OR ATTEMPT TO ENTER THIS STATE DIRECTLY FROM A FOREIGN NATION
AT ANY LOCATION OTHER THAN A LAWFUL PORT OF ENTRY.
B. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF
SUBSECTION A OF THIS SECTION IF EITHER OF THE FOLLOWING
APPLIES:
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).
C. A PERSON MAY NOT BE ARRESTED FOR A VIOLATION OF THIS
SECTION WITHOUT PROBABLE CAUSE, WHICH SHALL BE ESTABLISHED BY
ANY OF THE FOLLOWING:
1. A LAW ENFORCEMENT OFFICER WHO WITNESSES THE
VIOLATION.
2. A TECHNOLOGICAL RECORDING OF THE VIOLATION.
3. ANY OTHER CONSTITUTIONALLY SUFFICIENT INDICIA OF
PROBABLE CAUSE.
D. THIS SECTION MAY ONLY BE ENFORCED
PROSPECTIVELY. THIS SECTION DOES NOT APPLY RETROACTIVELY AND
SHALL NOT BE CONSTRUED TO APPLY TO THE CONDUCT OF ANY PERSON
WHO ENTERED THIS STATE UNLAWFULLY FROM A FOREIGN NATION AT ANY
TIME BEFORE THIS SECTION BECOMES ENFORCEABLE.
E. 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.
F. 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 or the person's nation of origin.

3. The person refuses to comply with the order.

B. A violation of this section is a Class 4 felony.

13-4295.03. Order to return to foreign nation

A. At any time before a person is convicted of or adjudicated for a violation of Section 13-4295.01, a court may dismiss the charge pending against the person and issue a written order in accordance with subsection B of this section.

B. A written order authorized by subsection A of this section shall discharge the person and require the person to return to the foreign nation from which the person entered or attempted to enter the United States or the person's nation of origin and may be issued if all of the following apply:

1. The person agrees to the order.

2. The person has not previously been convicted of an offense under this article or previously obtained a discharge under an order issued pursuant to this section.

3. The person is not charged with another Class 1 misdemeanor or any felony offense.

4. Before the issuance of the order, the arresting law enforcement agency does both of the following:

   (a) Collects all identifying information of the person, which must include taking fingerprints from the person and using other applicable photographic and biometric measures to identify the person.

   (b) Cross-references the collected information with all relevant local, state and federal criminal databases and federal lists or classifications that are used to identify a person as a threat or potential threat to national security.

C. On conviction of an offense under this article, the judge shall enter an order that requires the person to return to the foreign nation from which the person entered or attempted to enter the United States or the person's nation of origin. An order issued under this subsection takes effect on completion of any term of incarceration or imprisonment.

D. An order that is issued under this section must include an authorization that allows a state or local law enforcement agency to transport the person to a port of entry or to any other point of transfer into federal custody.
13-4295.04. **Enforcement of article**

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

13-4295.05. **Civil immunity for state and local public entities, officials, employees and contractors; other laws not affected**

A. A STATE OR LOCAL GOVERNMENT ENTITY, OFFICIAL, EMPLOYEE OR CONTRACTOR IS IMMUNE FROM LIABILITY FOR DAMAGES ARISING FROM A CAUSE OF ACTION UNDER THE LAWS OF THIS STATE RESULTING FROM AN ACTION TAKEN BY THE STATE OR LOCAL GOVERNMENT ENTITY, OFFICIAL, EMPLOYEE OR CONTRACTOR TO ENFORCE THIS ARTICLE OR AN ORDER ISSUED PURSUANT TO THIS ARTICLE DURING THE COURSE AND SCOPE OF THE STATE OR LOCAL GOVERNMENT ENTITY'S OFFICIAL'S, EMPLOYEE'S OR CONTRACTOR'S OFFICE, EMPLOYMENT OR PERFORMANCE FOR OR ON BEHALF OF THIS STATE OR THE LOCAL GOVERNMENT.

B. THIS SECTION SHALL NOT AFFECT A DEFENSE, IMMUNITY OR JURISDICTIONAL BAR AVAILABLE TO THIS STATE OR A LOCAL GOVERNMENT OR AN OFFICIAL, EMPLOYEE OR CONTRACTOR OF THIS STATE OR A LOCAL GOVERNMENT.

13-4295.06. **Incarceration authorization and agreements**

NOTWITHSTANDING ANY OTHER LAW, IF A COUNTY OR LOCAL LAW ENFORCEMENT AGENCY DOES NOT HAVE THE CAPACITY TO HOLD A PERSON WHO IS ARRESTED FOR OR CONVICTED OF AN OFFENSE INCLUDED IN THIS ARTICLE, THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS SHALL ACCEPT ARRESTED OR CONVICTED PERSONS WHO ARE CHARGED WITH OR CONVICTED OF AN OFFENSE INCLUDED IN THIS ARTICLE AT ANY FACILITY IN THIS STATE THAT HAS AVAILABLE CAPACITY.

Sec. 6. Title 23, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 23-215, to read:

23-215. **Employment eligibility; e-verify program; false documents; violation; classification**

A. ANY NATURAL PERSON WHO IS NOT LAWFULLY PRESENT IN THE UNITED STATES SHALL NOT KNOWINGLY SUBMIT FALSE INFORMATION OR DOCUMENTS TO AN EMPLOYER TO EVADE DETECTION OF EMPLOYMENT ELIGIBILITY UNDER THE E-VERIFY PROGRAM.

B. ANY NATURAL PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF 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.

Sec. 7. Right to intervene; lawsuit
A. The president of the senate, the speaker of the house of representatives, the minority leader of the senate or the minority leader of the house of representatives shall be allowed to file a lawsuit or intervene in any action concerning this act if the individual seeks to defend the constitutionality, validity or enforceability of this act.

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

Sec. 8. Severability
If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

PASSED by THE HOUSE FEBRUARY 22, 2024.

PASSED BY THE SENATE MAY 22, 2024.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 4, 2024.