

PROPOSED

SENATE AMENDMENTS TO H.C.R. 2060

(Reference to House engrossed resolution)

1 Strike everything after the resolving clause and insert:

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

6 AN ACT

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

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

15 Section 1. Short title

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

17 Sec. 2. Findings and declaration of purpose

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

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

24 2. From 2021 to 2023, United States Customs and Border
25 Protection encountered nearly seven million immigrants

1 illegally entering the United States through the southwest
2 border. This number does not include an estimated two million
3 "gotaways" who evaded encounters with border officials
4 entirely.

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

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

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

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

31 7. Many individuals who enter the United States
32 unlawfully are enticed by smugglers with promises of economic

1 incentives, including employment and taxpayer-funded benefits.
2 Human smuggling is a gateway crime for additional offenses,
3 including identity theft, document fraud and benefit fraud,
4 harming Arizona taxpayers. Unchecked and unauthorized
5 employment causes economic hardship to Arizona workers who may
6 face unfair labor competition, wage suppression and reduced
7 working conditions or opportunities.

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

10 (a) Empowering law enforcement to protect the public.

11 (b) Reducing the incentives for illegal immigration.

12 (c) Punishing criminals who fuel the crisis at Arizona's
13 southern border.

14 B. Based on these findings, the people of Arizona's
15 purpose in adopting the Secure the Border Act includes
16 protecting the public and responding to the harms related to an
17 unsecured border by:

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

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

25 3. Strengthening Arizona's laws that require
26 documentation of a person's lawful presence in the United
27 States in order to receive public benefits by requiring
28 agencies and political subdivisions of this state to use the
29 systematic alien verification for entitlements program to
30 verify benefit eligibility and validity of documents for people
31 who are not citizens or nationals of the United States.

1 4. INCREASING PUNISHMENTS FOR CRIMINALS WHO FUEL THE
2 CRISIS AT THE SOUTHERN BORDER BY SELLING FENTANYL THAT CAUSES
3 THE DEATH OF ANOTHER PERSON.

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

7 1-503. Federal, state and local public benefits; false
8 documents; violation; classification;
9 definitions

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

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

18 C. FOR THE PURPOSES OF THIS SECTION:

19 1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING
20 PRESCRIBED IN SECTION 1-501.

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

23 1-504. Document verification; applicants for public
24 benefits; definitions

25 A. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN
26 SECTIONS 1-501 AND 1-502, IF A PERSON WHO APPLIES FOR ANY
27 FEDERAL PUBLIC BENEFIT OR ANY STATE OR LOCAL PUBLIC BENEFIT IS
28 NOT A CITIZEN OR NATIONAL OF THE UNITED STATES, THE AGENCY OR
29 POLITICAL SUBDIVISION OF THIS STATE THAT ADMINISTERS THE PUBLIC
30 BENEFIT SHALL USE THE SYSTEMATIC ALIEN VERIFICATION FOR
31 ENTITLEMENTS PROGRAM THAT IS MAINTAINED BY THE UNITED STATES
32 CITIZENSHIP AND IMMIGRATION SERVICES, OR ANY SUCCESSOR PROGRAM

1 THAT IS DESIGNATED BY THE UNITED STATES DEPARTMENT OF HOMELAND
2 SECURITY, IN ORDER TO VERIFY THE VALIDITY OF THE DOCUMENTS
3 PROVIDED BY THE APPLICANT AND TO VERIFY THE APPLICANT'S
4 ELIGIBILITY FOR BENEFITS.

5 B. 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; classification

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

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

19 2. THE FENTANYL IS A SUBSTANTIAL CAUSE OF THE DEATH OF
20 ANOTHER PERSON.

21 B. SALE OF LETHAL FENTANYL IS A CLASS 2 FELONY, EXCEPT
22 THAT THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCES SHALL BE
23 INCREASED BY FIVE YEARS.

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

26 ARTICLE 35. ILLEGAL ENTRY INTO THIS STATE

27 13-4295. Definitions

28 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

1 2. "PORT OF ENTRY" MEANS A PORT OF ENTRY IN THE UNITED
2 STATES AS DESCRIBED IN 19 CODE OF FEDERAL REGULATIONS SECTION
3 101.1.

4 13-4295.01. Illegal entry from foreign nation;
5 affirmative defense; classification

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

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

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

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

16 3. THE DEFENDANT WAS APPROVED FOR BENEFITS UNDER THE
17 DEFERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM BETWEEN JUNE 15,
18 2012 AND JULY 16, 2021.

19 C. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR,
20 EXCEPT THAT IT IS A CLASS 6 FELONY IF THE PERSON HAS BEEN
21 PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SECTION. THE
22 PERSON IS NOT ELIGIBLE FOR PROBATION, PARDON, COMMUTATION OR
23 SUSPENSION OF SENTENCE OR RELEASE ON ANY OTHER BASIS UNTIL THE
24 PERSON HAS SERVED NOT LESS THAN THIRTY CONSECUTIVE DAYS OF
25 INCARCERATION.

26 13-4295.02. Refusal to comply with order to return to a
27 foreign nation; classification

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

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

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

5 3. THE PERSON REFUSES TO COMPLY WITH THE ORDER.

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

7 13-4295.03. ORDER TO RETURN TO FOREIGN NATION

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

12 B. A WRITTEN ORDER AUTHORIZED BY SUBSECTION A OF THIS
13 SECTION SHALL DISCHARGE THE PERSON AND REQUIRE THE PERSON TO
14 RETURN TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR
15 ATTEMPTED TO ENTER THE UNITED STATES AND MAY BE ISSUED IF ALL
16 OF THE FOLLOWING APPLY:

17 1. THE PERSON AGREES TO THE ORDER.

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

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

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

25 (a) COLLECTS ALL IDENTIFYING INFORMATION OF THE PERSON,
26 WHICH MUST INCLUDE TAKING FINGERPRINTS FROM THE PERSON AND
27 USING OTHER APPLICABLE PHOTOGRAPHIC AND BIOMETRIC MEASURES TO
28 IDENTIFY THE PERSON.

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

1 C. ON CONVICTION OF AN OFFENSE UNDER THIS ARTICLE, THE
2 JUDGE SHALL ENTER AN ORDER THAT REQUIRES THE PERSON TO RETURN
3 TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR
4 ATTEMPTED TO ENTER THE UNITED STATES. AN ORDER ISSUED UNDER
5 THIS SUBSECTION TAKES EFFECT ON COMPLETION OF ANY TERM OF
6 INCARCERATION OR IMPRISONMENT.

7 D. AN ORDER THAT IS ISSUED UNDER THIS SECTION MUST
8 INCLUDE BOTH OF THE FOLLOWING:

9 1. THE MANNER OF TRANSPORTATION OF THE PERSON TO A PORT
10 OF ENTRY.

11 2. THE NAME OF THE LAW ENFORCEMENT OFFICER OR STATE
12 AGENCY THAT IS RESPONSIBLE FOR MONITORING COMPLIANCE WITH THE
13 ORDER.

14 13-4295.04. Enforcement of article

15 NOTWITHSTANDING ANY OTHER LAW, THIS ARTICLE MAY NOT BE
16 ENFORCED IN ANY MANNER UNTIL SIXTY DAYS AFTER EITHER OF THE
17 FOLLOWING FIRST OCCURS:

18 1. ANY PART OF SECTION 2 OF S.B. 4, 88TH LEG., 4TH
19 CALLED SESS. (2023) THAT WAS ENACTED IN THE STATE OF TEXAS GOES
20 INTO EFFECT AND IS STILL IN EFFECT WHEN THIS ARTICLE BECOMES
21 ENFORCEABLE.

22 2. THE UNITED STATES SUPREME COURT OVERRULES IN WHOLE OR
23 PART ANY PORTION OF THE DECISION IN WHICH THE COURT HELD THAT
24 PARTS OF LAWS 2010, CHAPTERS 113 AND 211 WERE UNCONSTITUTIONAL
25 IN ARIZONA V. UNITED STATES, 567 U.S. 387, 394 (2012).

26 13-4295.05. Civil immunity for state and local public
27 entities, officials, employees and
28 contractors; other laws not affected

29 A. A STATE OR LOCAL GOVERNMENT ENTITY, OFFICIAL,
30 EMPLOYEE OR CONTRACTOR IS IMMUNE FROM LIABILITY FOR DAMAGES
31 ARISING FROM A CAUSE OF ACTION UNDER THE LAWS OF THIS STATE
32 RESULTING FROM AN ACTION TAKEN BY THE STATE OR LOCAL GOVERNMENT

1 ENTITY, OFFICIAL, EMPLOYEE OR CONTRACTOR TO ENFORCE THIS
2 ARTICLE 3 OR AN ORDER ISSUED PURSUANT TO THIS ARTICLE DURING
3 THE COURSE AND SCOPE OF THE STATE OR LOCAL GOVERNMENT ENTITY'S
4 OFFICIAL'S, EMPLOYEE'S OR CONTRACTOR'S OFFICE, EMPLOYMENT OR
5 PERFORMANCE FOR OR ON BEHALF OF THIS STATE OR THE LOCAL
6 GOVERNMENT.

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

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

13 23-215. Employment eligibility; e-verify program; false
14 documents; violation; classification

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

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

21 Sec. 7. Right to intervene; lawsuit

22 A. If any lawsuit is filed challenging any part of this
23 act, the president of the senate, the speaker of the house of
24 representatives, the minority leader of the senate or the
25 minority leader of the house of representatives shall be
26 allowed to intervene in the action so long as the individual is
27 intervening to defend the constitutionality of the law.

28 B. Any settlement of a lawsuit challenging this act
29 cannot be entered before service of a twenty-one-day notice to
30 the president of the senate, speaker of the house of
31 representatives, minority leader of the senate and minority
32 leader of the house of representatives. The failure to comply

1 with this subsection shall invalidate the settlement and
2 constitutes a violation of section 38-443, Arizona Revised
3 Statutes.

4 Sec. 8. Severability

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

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

13 Amend title to conform

DAVID GOWAN

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