



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

FACT SHEET FOR H.B. 2821

state crime; illegal border crossings

Purpose

Makes it unlawful for a person who is an alien (unlawful immigrant) to enter the State Arizona from a foreign nation at any location other than a lawful port of entry. Outlines penalties for violations of illegally entering the state and provides immunity from civil liability and indemnification for state and local government officials, employees and contractors who enforce this prohibition.

Background

Any unlawful immigrant must be fined and imprisoned for not more than six months, or for not more than 2 years for a subsequent offense involving: 1) entering or attempting to enter the United States at any time or place other than as designated by immigration officers; 2) eluding examination or inspection by immigration officers; or 3) attempting to enter or obtain entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact ([8 U.S.C. § 1325](#)). Any unlawful immigrant who is physically present in the United States or who arrives in the United States, regardless of whether the unlawful immigrant enters through a designated port of arrival, and including an unlawful immigrant who is brought to the United States after having been interdicted in international or United States waters, may apply for asylum. In order to be granted asylum, the unlawful immigrant must demonstrate that they are a refugee as defined in federal statute, and that race, religion, nationality, membership in a particular social group or political opinion was or will be at least one central reason for persecuting the applicant ([8 U.S.C. § 1158](#)).

The Deferred Action for Childhood Arrivals (DACA) program allows qualified individuals without lawful immigration status to defer removal of the individual from the United States. Deferred action remains in effect for a period of two years, subject to renewal, and provides recipients with employment authorization. On July 16, 2021, the U.S. District Court for the Southern District of Texas issued a vacatur and a permanent injunction against the continued operation of the program, thereby enjoining the U.S. Department of Homeland Security from granting DACA status for new applicants ([U.S. Department of Homeland Security](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Illegal Entry

1. Makes it unlawful for a person who is an unlawful immigrant to enter or attempt to enter the State of Arizona directly from a foreign nation at any location other than a lawful port of entry.

2. Outlines the following as affirmative defenses to *illegal entry*:
 - a) the federal government has granted the defendant lawful presence in the United States or asylum under federal law;
 - b) the defendant's conduct does not constitute a violation of *improper entry by an alien* under federal law; and
 - c) the defendant was approved for benefits under the DACA program between June 15, 2012, and July 8, 2021.
3. Stipulates that the following federal programs do not provide an affirmative defense:
 - a) the Deferred Action for Parents of Americans and Lawful Permanent Residents Program (DAPA); and
 - b) any program not enacted by the U.S. Congress that is a successor to or materially similar to DAPA.
4. Makes it unlawful for a person who is an unlawful immigrant to enter, attempt to enter or be found at any time in the state if:
 - a) the person has been denied admission to or excluded, deported or removed from the United States; or
 - b) the person has departed from the United States while an order of exclusion, deportation or removal is outstanding.
5. Classifies a violation of *illegal entry* as a class 1 misdemeanor, except that violation is a class 6 felony if the person has previously been convicted of *illegal entry*.
6. Classifies a violation of *illegal entry* as a class 3 felony if the violation includes any of the following:
 - a) the defendant's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs or crime against a person, or both;
 - b) the defendant was excluded pursuant to federal law related to exclusion of unlawful immigrant who have engaged in terrorist activities;
 - c) the defendant was removed pursuant to federal law governing the removal of unlawful immigrants who have engaged in terrorist activity; or
 - d) the defendant was removed pursuant to federal law relating to removal of nonviolent offenders prior to the completion of imprisonment sentences.
7. Stipulates that a violation of *illegal entry* is a class 2 felony if the defendant was removed subsequent to a conviction for the commission of a felony.
8. States that a person convicted of an *illegal entry* offense is not eligible for community supervision.
9. Prohibits the court from abating the prosecution of an illegal entry offense on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.
10. Defines *removal* as it relates to *illegal entry* to include an order to return to a foreign nation or any other agreement in which an unlawful immigrant stipulates to removal pursuant to a criminal proceeding to either federal or state law.

Order to Return to a Foreign Nation

11. Allows a magistrate, during a person's appearance before said magistrate, to order the person to be released from custody and issue a written order to return to a foreign nation after determining that probable cause exists for an arrest for an *illegal entry* offense.
12. Allows a judge, at any time after a person's appearance before the magistrate, to dismiss the charge pending against the person and issue a written order to return to a foreign nation instead of continuing the prosecution of the person or entering an adjudication regarding an *illegal entry* offense.
13. Requires a person who is issued an order to return to the foreign nation from which the person entered or attempted to enter and stipulates that the order discharges the person.
14. Allows an order to be issued if:
 - a) the person agrees to the order;
 - b) the person has not previously been convicted of an *illegal entry* offense or previously obtained a discharge under an order;
 - c) the person is not charged with another class 1 misdemeanor or any felony offense; and
 - d) before issuance of the order, the arresting law enforcement agency has collected all identifying information of the person, including fingerprints and other applicable photographic and biometric identifiers, and all relevant federal, state and local criminal databases have been cross-referenced to determine if the person is a threat to national security.
15. Requires a judge, on conviction of an *illegal entry* offense, to enter an order that requires the person to return to the foreign nation from which the person entered or attempted to enter.
16. States that an order takes effect on completion of the person's term of imprisonment.
17. Requires an order to include:
 - a) the manner of transportation of the person to a port of entry; and
 - b) the law enforcement officer or state agency that is responsible for monitoring compliance with the order.
18. Requires an order to be filed with either the county clerk of the county in which the person was arrested, or the clerk of the court exercising jurisdiction in the case.
19. States that a person commits *refusal to comply with an order to return to a foreign nation* if:
 - a) the person is charged with or convicted of an *illegal entry* offense;
 - b) a magistrate or judge issues an order to return to the foreign nation from which the person entered or attempted to enter; and
 - c) the person refuses to comply with the order.
20. Classifies a violation of *refusal to comply with an order to return to a foreign nation* as a class 2 felony.
21. Prohibits a peace officer from arresting or detaining a person for *illegal entry* offenses if the person is on the premises or grounds of:
 - a) a public or private primary or postsecondary educational institution;

- b) a church, synagogue or other established place of religious worship; and
- c) a specified health care facility, if the person is on the premises or grounds of the facility to receive medical treatment.

22. Requires the law enforcement officer or state agency required to monitor compliance with the order to report the issuance of the order to the Department of Public Safety, not less than the seventh day after the date of order issuance, for inclusion in the central state repository.
23. Requires *illegal entry* offenses for which an order to return was issued to be included in the central state repository.

Civil Immunity and Indemnification

24. Indemnifies a local government official, employee or contractor, and an elected or appointed state official or a state employee or contractor, from civil liability for damages arising from a cause of action under the laws of the state resulting from action taken by the official, employee or contractor to enforce laws related to *illegal entry* during the course and scope of the office, employment or contract.
25. Requires a local government or the state to indemnify an official, employee or contractor for damages arising from a cause of action under federal law resulting from an action taken by the official, employee or contractor to enforce laws related to *illegal entry* during the course and scope of the office, employment or contract.
26. Caps indemnification payments made for local government officials, employees or contractors at:
- a) \$100,000 for any one person or \$300,000 for any single occurrence in the case of personal injury or death; or
 - b) \$10,000 for a single occurrence of property damage.
27. Stipulates that indemnification payments made for state officials, employees or contractors, notwithstanding any other law, is not subject to indemnification limits under the laws of the state.
28. Stipulates that immunity from civil liability and indemnification do not apply if the court or a jury determines that the official, employee or contractor acted in bad faith, with conscious indifference or with recklessness.
29. Requires a local government or the state to indemnify an official, employee or contractor for reasonable attorney fees incurred in defense of a criminal prosecution against official, employee or contractor for outlined actions.
30. Requires the Attorney General to represent a state official, employee or contractor in any action in which the official, employee or contractor may be entitled to indemnification.
31. Stipulates that provisions related to civil immunity and indemnification do not waive statutory limits on damages under state law.

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32. Requires an appeal of a civil action brought against a person who may be entitled to immunity or indemnification to be taken to directly to the Arizona Supreme Court.
33. States that immunity and indemnification provisions do not affect a defense, immunity or jurisdictional bar available to this state or a government official, or an official, employee or contractor of the state or local government.
34. Defines *alien* as a person who is not a citizen or national of the United States as described in federal law.
35. Defines *port of entry* as a port of entry in the United States as defined in federal regulation.
36. Makes conforming changes.
37. Becomes effective on the general effective date.

House Action

JUD	2/14/24	DP	6-3-0-0
3 rd Read	2/22/24		31-28-0-0-1

(W/O emergency)

Prepared by Senate Research
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ZD/cs