

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE SENATE
MILITARY AFFAIRS, PUBLIC SAFETY AND
BORDER SECURITY COMMITTEE

ZACK DEAN
LEGISLATIVE RESEARCH ANALYST
MILITARY AFFAIRS, PUBLIC SAFETY AND
BORDER SECURITY COMMITTEE
Telephone: (602) 926-3171

DATE: May 7, 2024

SUBJECT: Strike everything amendment to H.C.R. 2060, relating to border security

Purpose

Subject to voter approval, statutorily makes it unlawful for a person who is an unlawful immigrant to enter Arizona from a foreign nation at any location other than a lawful port of entry. Outlines requirements for the issuance of an order to return to a foreign nation, civil immunity and enforceability of unlawful immigration laws. Prohibits natural persons from submitting false documents when applying for public benefits or employment.

Background

Statute requires any natural person who applies for a state or local public benefit, or any federal public benefit that requires participants to be citizens or legal residents of the United States or otherwise lawfully present in the United States, to submit at least one of the following documents demonstrating lawful presence in the United States: 1) an Arizona driver license issued after 1996 or an Arizona nonoperating identification license; 2) a birth certificate or delayed birth certificate issued in any state, territory or possession of the United States; 3) a U.S. certificate of birth abroad; 4) a U.S. passport; 5) a foreign passport with a U.S. visa; 6) an I-94 form with a photograph; 7) a U.S. citizenship and immigration services employment authorization document or refugee travel document; 8) a U.S. certificate of naturalization; 9) a U.S. certificate of citizenship; 10) a tribal certificate of Indian blood; or 11) a tribal or Bureau of Indian Affairs affidavit of birth. Any person applying for such benefits must sign a sworn affidavit stating under penalty of perjury that the documents presented are true, and failure to report discovered violations of federal immigration law by an employee of the state is a class 2 misdemeanor (A.R.S. §§ [1-501](#) and [1-502](#)).

E-Verify is a web-based system through which employers create cases based on information taken from an employee's Form I-9, which is then electronically compared to information available to the U.S. Department of Homeland Security and the Social Security Administration. Similarly, the Systematic Alien Verification for Entitlements (SAVE) Program is an online service that allows federal, state and local benefit-granting agencies to verify a benefit applicant's immigration status or citizenship and is administered by the U.S. Department of Homeland Security. After hiring an employee, every employer in Arizona must verify the employment eligibility of the employee through the E-Verify program and must keep a record of the certification for the duration of the employee's employment, or at least 3 years, whichever is longer. An employer must also be registered with and participate in the E-Verify program in order to receive an economic development incentive ([A.R.S. § 23-214](#)).

Any unlawful immigrant must be fined and imprisoned for not more than six months, or for not more than two 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 federal 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](#)).

A person is guilty of a class 2 felony if they knowingly transport a narcotic drug for sale. A class 2 felony for a non-dangerous offense carries a minimum sentence of 4 years, a presumptive sentence of 5 years and a maximum sentence of 10 years. A class 2 felony for a non-dangerous, repetitive offense carries a minimum sentence of 6 years, presumptive sentence of 9.25 years and a maximum sentence of 18.5 years (A.R.S. §§ [13-702](#); [13-703](#) and [13-3408](#)).

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 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. Classifies a violation of *illegal entry* as a class 1 misdemeanor, except that a violation is a class 6 felony if the person has previously been convicted of *illegal entry*.

4. Stipulates that a person convicted of *illegal entry* is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than 30 consecutive days of incarceration.

Order to Return to a Foreign Nation

5. Allows a court, at any time before a person is convicted of or adjudicated for an *illegal entry* violation, to dismiss the charge pending against the person and issue an order to return to a foreign nation.
6. Stipulates that an order to return to a foreign nation discharges the person and requires the person to return to the foreign nation from which the person entered or attempted to enter the United States.
7. Allows an order to return to a foreign nation 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.
8. Requires a judge, on a person's 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 the United States.
9. States that an order issued after an *illegal entry* conviction takes effect on completion of the person's term of incarceration or imprisonment.
10. 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.
11. 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) an applicable court has issued an order to return to the foreign nation from which the person entered or attempted to enter the United States; and
 - c) the person refuses to comply with the order.
12. Classifies a violation of *refusal to comply with an order to return to a foreign nation* as a class 4 felony.

Enforcement of Illegal Entry

13. Prohibits the enforcement of provisions relating to *illegal entry* in any manner until 60 days after either of the following first occurs:
 - a) any part of Section 2 of S.B. 4, 88th Legislature, 4th Called Session (2023) of the State of Texas goes into effect and is still in effect when this legislation becomes enforceable; or
 - b) the U.S. Supreme Court overrules in whole or in part any portion of the decision in which the Court held that parts of Laws 2010, Chapters 113 and 211 were unconstitutional in the case *Arizona v. United States*, 567 U.S. 387, 394 (2012).

Civil Immunity

14. Immunizes a state or local government entity, official, employee or contractor from civil liability for damages arising from a cause of action under the laws of Arizona resulting from action taken by the entity, official, employee or contractor to enforce laws related to *illegal entry* or orders to return to a foreign nation during the course and scope of the office, employment, or performance for or on behalf of Arizona or the local government.
15. States that immunity provisions do not affect a defense, immunity or jurisdictional bar available to the state or a government official, or an official, employee or contractor of the state or local government.

Public Benefits and Employment Eligibility

16. Prohibits, notwithstanding any other law and to the extent allowed by federal law, any natural person who is not lawfully present in the United States from knowingly applying for a federal, state or local public benefit by submitting a false document to any entity that administers the benefits.
17. States that any natural person who violates the prohibition against submitting false public benefits documents is guilty of a class 6 felony.
18. Requires an agency or political subdivision that administers public benefits, if a person who applies for public benefits is not a citizen or national of the United States, to use the SAVE Program maintained by the U.S. Citizenship and Immigration Services, or any designated successor program, to verify the validity of the applicant's eligibility for benefits.
19. Prohibits any natural person who is not lawfully present in the United States from knowingly submitting false information for documents to an employer to evade detection of employment eligibility under the E-Verify program.
20. States that any natural person who violates the prohibition against submitting false employment eligibility documents is guilty of a class 6 felony.

Sale of Lethal Fentanyl

21. Establishes that a person who is at least 18 years old commits the crime of *sale of lethal fentanyl*, if the person knowingly commits *transporting a narcotic drug for sale*, and if both of the following apply:
 - a) the person knows that the drug being sold contains fentanyl; and
 - b) the fentanyl is a substantial cause of death of another person.
22. States that the penalty for *sale of lethal fentanyl* is a class 2 felony, except that the presumptive, minimum and maximum sentences must be increased by five years.

Right to Intervene

23. Provides 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 with the ability to intervene in an action challenging any part of the *Secure the Border Act*, provided that the individual is intervening to defend the constitutionality of the law.
24. Stipulates that any settlement of a lawsuit challenging the *Secure the Border Act* cannot be entered before service of a 21-day notice to the aforementioned entities, and that failure to comply with this requirement invalidates the settlement and constitutes an act of nonfeasance in public office.

Miscellaneous

25. Defines *alien* as a person who is not a citizen or national of the United States as described in federal law.
26. Defines *port of entry* as a port of entry in the United States as defined in federal regulation.
27. Defines *federal public benefit* and *state or local public benefit*.
28. Designates this legislation as the *Secure the Border Act*.
29. Contains a severability clause.
30. Contains a statement of legislative findings.
31. Requires the Secretary of State to submit the proposition to the voters at the next general election.
32. Becomes effective if approved by the voters and on proclamation of the Governor.