

PROPOSITION 314
[HCR 2060 - 2024]

border; benefits; fentanyl; illegal entry

ANALYSIS BY LEGISLATIVE COUNCIL

Legislative Council Staff Draft

1 Proposition 314 would establish criminal penalties against a person who is not lawfully
2 present in the United States and who submits false documentation when both applying for public
3 benefits and during the employment eligibility verification process. An entity that accepts public
4 benefits applications would have to verify the person's identity by using a federal verification
5 database. Proposition 314 would make it a class 2 felony for a person to knowingly sell fentanyl
6 if the person knows that the drug being sold contains fentanyl, that the fentanyl was not lawfully
7 manufactured or imported into the United States and that the drug caused the death of another
8 person. Proposition 314 would establish state crimes related to entering this state from a location
9 that is not a lawful port of entry or not complying with an order to leave this state.

10 More specifically, Proposition 314 would:

11 1. Create a new state crime that prohibits a natural person who is not lawfully present in
12 the United States from knowingly submitting false documentation when applying for a federal,
13 state or local public benefit. The crime would be a class 6 felony. In order to verify the validity
14 of the applicant's documents and eligibility for benefits, the agency or political subdivision of this
15 state that administers the public benefit would be required to use the federal government's
16 systematic alien verification for entitlements program or a successor program if the applicant is
17 not a citizen or national of the United States.

18 2. Create a new state crime that prohibits a natural person who is not lawfully present in
19 the United States from knowingly submitting false information or documents to an employer to
20 evade detection of employment eligibility under the E-Verify program. Current law requires
21 certain employers to use the E-Verify program to determine if a person is eligible to be employed
22 in this state. The crime would be a class 1 misdemeanor, except that it would be a class 6 felony
23 if the person has previously been convicted of submitting false information or documents to an
24 employer. A person convicted of this crime would be required to be incarcerated for a period of
25 time as determined by the court before the person could be released on probation or any other type
26 of release.

27 3. Create a new state crime that prohibits a person who is at least 18 years of age from
28 knowingly selling fentanyl in violation of the current drug laws if the person knows the drug sold
29 contains fentanyl and the fentanyl causes the death of another person. The crime would be a class
30 2 felony and would require that any prison sentence imposed on the person be increased by five
31 years. It would be an affirmative defense to a prosecution of this crime if the fentanyl and the
32 fentanyl's precursor chemicals were manufactured in the United States or were lawfully imported
33 into the United States.

34 4. Create a new state crime that prohibits a person who is an alien from entering or

1 attempting to enter this state directly from a foreign nation at any location that is not a lawful port
2 of entry. There are affirmative defenses that would apply to aliens who have been granted asylum
3 or lawful presence in the United States or that would apply if the alien's conduct is not a violation
4 of federal immigration laws. The crime would be a class 1 misdemeanor, except that it would be
5 a class 6 felony if the person has been previously convicted of this crime. A person convicted of
6 this crime would be required to be incarcerated for a period of time as determined by the court
7 before the person could be released on probation or any other type of release. Proposition 314
8 would also create a new state crime for an alien who enters this state at a location other than a
9 lawful port of entry and refuses to comply with an order to return to a foreign nation or the alien's
10 nation of origin. The crime would be a class 4 felony. Proposition 314 would allow a court to
11 dismiss a criminal charge against an alien if the alien agrees to return to the foreign nation from
12 which the alien entered or attempted to enter the United States or to their nation of origin and meets
13 other conditions. An alien could not be prosecuted for any of these crimes until a similar law in
14 the state of Texas or a similar law in any other state has been in effect for at least 60 consecutive
15 days after Proposition 314 is approved by voters and becomes effective. The new crimes related
16 to an alien who enters or attempts to enter this state from a location that is not a port of entry do
17 not apply to a person who entered this state before the new crimes become enforceable.
18 Proposition 314 would also provide that a state or local government entity, official, employee or
19 contractor has civil immunity under state law for an action taken to enforce the laws that prohibit
20 an alien from entering this state from a location that is not a lawful port of entry. If a county or
21 local law enforcement agency does not have the capacity to hold a person who is arrested or
22 convicted under this new law, Proposition 314 would require the Arizona Department of
23 Corrections to accept the arrested or convicted person at any facility in this state that has available
24 room for the person.