

~~lawful presence; e-verify program; penalties~~
(now: border; benefits; fentanyl; illegal entry)

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)

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

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

7 AN ACT

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

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

16 Section 1. Short title

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

18 Sec. 2. Findings and declaration of purpose

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

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

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

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

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

39 5. From 2021 to 2023, the amount of fentanyl seized at
40 the southwest border almost tripled, amounting to billions of
41 doses of fentanyl. Illicit fentanyl, which is primarily
42 produced in foreign nations and smuggled across the southwest
43 border, is a synthetic opioid fifty times stronger than
44 heroin. Even a single dose can be lethal. Synthetic opioids
45 like fentanyl have now become the leading cause of overdose

1 deaths in the United States. Transnational cartels fund their
2 operations by trafficking this deadly drug across the southwest
3 border.

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

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

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

- 21 (a) Empowering law enforcement to protect the public.
- 22 (b) Reducing the incentives for illegal immigration.
- 23 (c) Punishing criminals who fuel the crisis at Arizona's
24 southern border.

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

32 C. Based on these findings, the people of Arizona's
33 purpose in adopting the Secure the Border Act includes
34 protecting the public and responding to the harms related to an
35 unsecured border by:

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

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

43 3. Strengthening Arizona's laws that require
44 documentation of a person's lawful presence in the United States
45 in order to receive public benefits by requiring agencies and

1 political subdivisions of this state to use the systematic alien
2 verification for entitlements program to verify benefit
3 eligibility and validity of documents for people who are not
4 citizens or nationals of the United States.

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

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

11 1-503. Federal, state and local public benefits; false
12 documents; violation; classification;
13 definitions

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

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

22 C. FOR THE PURPOSES OF THIS SECTION:

23 1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING
24 PRESCRIBED IN SECTION 1-501.

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

27 1-504. Document verification; applicants for public
28 benefits; definitions

29 A. IF A NATURAL PERSON WHO APPLIES FOR ANY FEDERAL PUBLIC
30 BENEFIT PURSUANT TO SECTION 1-501 OR ANY STATE OR LOCAL PUBLIC
31 BENEFIT PURSUANT TO SECTION 1-502 IS NOT A CITIZEN OR NATIONAL
32 OF THE UNITED STATES, THE AGENCY OR POLITICAL SUBDIVISION OF
33 THIS STATE THAT ADMINISTERS THE PUBLIC BENEFIT SHALL USE THE
34 SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM THAT IS
35 MAINTAINED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION
36 SERVICES, OR ANY SUCCESSOR PROGRAM THAT IS DESIGNATED BY THE
37 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IN ORDER TO
38 VERIFY THE VALIDITY OF THE DOCUMENTS PROVIDED BY THE APPLICANT
39 AND TO VERIFY THE APPLICANT'S ELIGIBILITY FOR BENEFITS.

40 B. THIS SECTION DOES NOT RELIEVE A NATURAL PERSON OF ANY
41 REQUIREMENT TO SUBMIT DOCUMENTATION THAT IS REQUIRED FOR ANY
42 FEDERAL PUBLIC BENEFIT PURSUANT TO SECTION 1-501 OR ANY STATE
43 OR LOCAL PUBLIC BENEFIT PURSUANT TO SECTION 1-502.

44 C. FOR THE PURPOSES OF THIS SECTION:

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

3 C. A PERSON MAY NOT BE ARRESTED FOR A VIOLATION OF THIS
4 SECTION WITHOUT PROBABLE CAUSE, WHICH SHALL BE ESTABLISHED BY
5 ANY OF THE FOLLOWING:

6 1. A LAW ENFORCEMENT OFFICER WHO WITNESSES THE VIOLATION.

7 2. A TECHNOLOGICAL RECORDING OF THE VIOLATION.

8 3. ANY OTHER CONSTITUTIONALLY SUFFICIENT INDICIA OF
9 PROBABLE CAUSE.

10 D. THIS SECTION MAY ONLY BE ENFORCED
11 PROSPECTIVELY. THIS SECTION DOES NOT APPLY RETROACTIVELY AND
12 SHALL NOT BE CONSTRUED TO APPLY TO THE CONDUCT OF ANY PERSON
13 WHO ENTERED THIS STATE UNLAWFULLY FROM A FOREIGN NATION AT ANY
14 TIME BEFORE THIS SECTION BECOMES ENFORCEABLE.

15 E. AN ALIEN LACKS LAWFUL PRESENCE UNDER THIS SECTION IF
16 THE ALIEN WAS EITHER:

17 1. PAROLED PURSUANT TO A PROGRAMMATIC GRANT OF PAROLE,
18 INCLUDING UNDER ANY PAROLE PROGRAM NOT CREATED UNDER NOTICE-AND-
19 COMMENT RULEMAKING THAT ESTABLISHES SPECIFIC CHARACTERISTICS
20 UNDER WHICH AN ALIEN WOULD BE ENTITLED TO PAROLE AND THAT HAS
21 BEEN APPLIED TO MORE THAN ONE HUNDRED ALIENS DURING ONE CALENDAR
22 YEAR.

23 2. REQUIRED TO BE DETAINED UNDER THE IMMIGRATION AND
24 NATIONALITY ACT BUT WAS NOT DETAINED AND INSTEAD WAS PAROLED
25 INTO THE UNITED STATES.

26 F. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR,
27 EXCEPT THAT IT IS A CLASS 6 FELONY IF THE PERSON HAS BEEN
28 PREVIOUSLY CONVICTED OF A VIOLATION OF THIS SECTION. THE PERSON
29 IS NOT ELIGIBLE FOR PROBATION, PARDON, COMMUTATION OR SUSPENSION
30 OF SENTENCE OR RELEASE ON ANY OTHER BASIS UNTIL THE PERSON HAS
31 SERVED A TERM OF INCARCERATION AS DETERMINED BY THE COURT.

32 13-4295.02. Refusal to comply with order to return to a
33 foreign nation; classification

34 A. A PERSON WHO IS AN ALIEN COMMITS REFUSAL TO COMPLY
35 WITH AN ORDER TO RETURN TO A FOREIGN NATION IF ALL OF THE
36 FOLLOWING OCCUR:

37 1. THE PERSON IS CHARGED WITH OR CONVICTED OF AN OFFENSE
38 UNDER THIS ARTICLE.

39 2. A COURT, AS APPLICABLE, ISSUES AN ORDER PURSUANT TO
40 SECTION 13-4295.03 FOR THE PERSON TO RETURN TO THE FOREIGN
41 NATION FROM WHICH THE PERSON ENTERED OR ATTEMPTED TO ENTER THE
42 UNITED STATES OR THE PERSON'S NATION OF ORIGIN.

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

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

1 13-4295.03. Order to return to foreign nation

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

6 B. A WRITTEN ORDER AUTHORIZED BY SUBSECTION A OF THIS
7 SECTION SHALL DISCHARGE THE PERSON AND REQUIRE THE PERSON TO
8 RETURN TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR
9 ATTEMPTED TO ENTER THE UNITED STATES OR THE PERSON'S NATION OF
10 ORIGIN AND MAY BE ISSUED IF ALL OF THE FOLLOWING APPLY:

11 1. THE PERSON AGREES TO THE ORDER.

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

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

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

19 (a) COLLECTS ALL IDENTIFYING INFORMATION OF THE PERSON,
20 WHICH MUST INCLUDE TAKING FINGERPRINTS FROM THE PERSON AND USING
21 OTHER APPLICABLE PHOTOGRAPHIC AND BIOMETRIC MEASURES TO IDENTIFY
22 THE PERSON.

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

27 C. ON CONVICTION OF AN OFFENSE UNDER THIS ARTICLE, THE
28 JUDGE SHALL ENTER AN ORDER THAT REQUIRES THE PERSON TO RETURN
29 TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR ATTEMPTED
30 TO ENTER THE UNITED STATES OR THE PERSON'S NATION OF ORIGIN.
31 AN ORDER ISSUED UNDER THIS SUBSECTION TAKES EFFECT ON COMPLETION
32 OF ANY TERM OF INCARCERATION OR IMPRISONMENT.

33 D. AN ORDER THAT IS ISSUED UNDER THIS SECTION MUST
34 INCLUDE AN AUTHORIZATION THAT ALLOWS A STATE OR LOCAL LAW
35 ENFORCEMENT AGENCY TO TRANSPORT THE PERSON TO A PORT OF ENTRY
36 OR TO ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY.

1 13-4295.04. Enforcement of article

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

8 13-4295.05. Civil immunity for state and local public
9 entities, officials, employees and
10 contractors; other laws not affected

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

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

24 13-4295.06. Incarceration authorization and
25 agreements

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

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

35 23-215. Employment eligibility; e-verify program; false
36 documents; violation; classification

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

41 B. ANY NATURAL PERSON WHO VIOLATES SUBSECTION A OF THIS
42 SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR, EXCEPT THAT IT IS A
43 CLASS 6 FELONY IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF A
44 VIOLATION OF THIS SECTION. THE PERSON IS NOT ELIGIBLE FOR
45 PROBATION, PARDON, COMMUTATION OR SUSPENSION OF SENTENCE OR

1 RELEASE ON ANY OTHER BASIS UNTIL THE PERSON HAS SERVED A TERM
2 OF INCARCERATION AS DETERMINED BY THE COURT.

3 Sec. 7. Right to intervene; lawsuit

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

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

18 Sec. 8. Severability

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

24 2. The Secretary of State shall submit this proposition to the voters
25 at the next general election as provided by article IV, part 1, section 1,
26 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.