

Senate Engrossed House Bill

~~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,  
2 the 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  
5 unsecured border, is enacted to become valid as a law if approved by the  
6 voters and 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  
15 BORDER.

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

17 Section 1. Short title

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

19 Sec. 2. Findings and declaration of purpose

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

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

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

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

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

42 5. From 2021 to 2023, the amount of fentanyl seized at  
43 the southwest border almost tripled, amounting to billions of  
44 doses of fentanyl. Illicit fentanyl, which is primarily  
45 produced in foreign nations and smuggled across the southwest

1 border, is a synthetic opioid fifty times stronger than  
2 heroin. Even a single dose can be lethal. Synthetic opioids  
3 like fentanyl have now become the leading cause of overdose  
4 deaths in the United States. Transnational cartels fund their  
5 operations by trafficking this deadly drug across the  
6 southwest border.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

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

5 C. 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; affirmative defense;  
13 classification

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

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

20 2. THE FENTANYL CAUSES THE DEATH OF ANOTHER PERSON.

21 B. IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE BROUGHT  
22 UNDER THIS SECTION THAT THE FENTANYL AND ITS PRECURSOR  
23 CHEMICALS WERE EITHER MANUFACTURED IN THE UNITED STATES OR  
24 WERE LAWFULLY IMPORTED INTO THE UNITED STATES.

25 C. SALE OF LETHAL FENTANYL IS A CLASS 2 FELONY, EXCEPT  
26 THAT THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCES SHALL BE  
27 INCREASED BY FIVE YEARS.

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

30 ARTICLE 35. ILLEGAL ENTRY INTO THIS STATE

31 13-4295. Definitions

32 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

36 2. "PORT OF ENTRY" MEANS A PORT OF ENTRY IN THE UNITED  
37 STATES AS DESCRIBED IN 19 CODE OF FEDERAL REGULATIONS SECTION  
38 101.1.

39 13-4295.01. Illegal entry from foreign nation;  
40 affirmative defense; probable cause to  
41 arrest; prospective applicability;  
42 classification

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

1 B. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF  
2 SUBSECTION A OF THIS SECTION IF EITHER OF THE FOLLOWING  
3 APPLIES:

4 1. THE FEDERAL GOVERNMENT HAS GRANTED THE DEFENDANT  
5 LAWFUL PRESENCE IN THE UNITED STATES OR ASYLUM UNDER 8 UNITED  
6 STATES CODE SECTION 1158.

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

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

12 1. A LAW ENFORCEMENT OFFICER WHO WITNESSES THE  
13 VIOLATION.

14 2. A TECHNOLOGICAL RECORDING OF THE VIOLATION.

15 3. ANY OTHER CONSTITUTIONALLY SUFFICIENT INDICIA OF  
16 PROBABLE CAUSE.

17 D. THIS SECTION MAY ONLY BE ENFORCED  
18 PROSPECTIVELY. THIS SECTION DOES NOT APPLY RETROACTIVELY AND  
19 SHALL NOT BE CONSTRUED TO APPLY TO THE CONDUCT OF ANY PERSON  
20 WHO ENTERED THIS STATE UNLAWFULLY FROM A FOREIGN NATION AT ANY  
21 TIME BEFORE THIS SECTION BECOMES ENFORCEABLE.

22 E. AN ALIEN LACKS LAWFUL PRESENCE UNDER THIS SECTION IF  
23 THE ALIEN WAS EITHER:

24 1. PAROLED PURSUANT TO A PROGRAMMATIC GRANT OF PAROLE,  
25 INCLUDING UNDER ANY PAROLE PROGRAM NOT CREATED UNDER  
26 NOTICE-AND-COMMENT RULEMAKING THAT ESTABLISHES SPECIFIC  
27 CHARACTERISTICS UNDER WHICH AN ALIEN WOULD BE ENTITLED TO  
28 PAROLE AND THAT HAS BEEN APPLIED TO MORE THAN ONE HUNDRED  
29 ALIENS DURING ONE CALENDAR YEAR.

30 2. REQUIRED TO BE DETAINED UNDER THE IMMIGRATION AND  
31 NATIONALITY ACT BUT WAS NOT DETAINED AND INSTEAD WAS PAROLED  
32 INTO THE UNITED STATES.

33 F. A VIOLATION OF THIS SECTION IS A CLASS 1  
34 MISDEMEANOR, EXCEPT THAT IT IS A CLASS 6 FELONY IF THE PERSON  
35 HAS BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS  
36 SECTION. THE PERSON IS NOT ELIGIBLE FOR PROBATION, PARDON,  
37 COMMUTATION OR SUSPENSION OF SENTENCE OR RELEASE ON ANY OTHER  
38 BASIS UNTIL THE PERSON HAS SERVED A TERM OF INCARCERATION AS  
39 DETERMINED BY THE COURT.

40 13-4295.02. Refusal to comply with order to return to a  
41 foreign nation; classification

42 A. A PERSON WHO IS AN ALIEN COMMITS REFUSAL TO COMPLY  
43 WITH AN ORDER TO RETURN TO A FOREIGN NATION IF ALL OF THE  
44 FOLLOWING OCCUR:

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

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

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

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

9           13-4295.03. Order to return to foreign nation

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

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

19           1. THE PERSON AGREES TO THE ORDER.

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

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

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

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

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

35          C. ON CONVICTION OF AN OFFENSE UNDER THIS ARTICLE, THE  
36 JUDGE SHALL ENTER AN ORDER THAT REQUIRES THE PERSON TO RETURN  
37 TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR  
38 ATTEMPTED TO ENTER THE UNITED STATES OR THE PERSON'S NATION OF  
39 ORIGIN. AN ORDER ISSUED UNDER THIS SUBSECTION TAKES EFFECT ON  
40 COMPLETION OF ANY TERM OF INCARCERATION OR IMPRISONMENT.

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





1 OF A VIOLATION OF THIS SECTION. THE PERSON IS NOT ELIGIBLE  
2 FOR PROBATION, PARDON, COMMUTATION OR SUSPENSION OF SENTENCE  
3 OR RELEASE ON ANY OTHER BASIS UNTIL THE PERSON HAS SERVED A  
4 TERM OF INCARCERATION AS DETERMINED BY THE COURT.

5 Sec. 7. Right to intervene; lawsuit

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

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

20 Sec. 8. Severability

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

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