



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
Second Regular Session

HB 2748: illegal border crossings; state; crime
Sponsor: Representative Chaplik, LD 3
Committee on Military Affairs & Public Safety

Overview

Establishes penalties and enforcement against illegal border crossings.

History

Federal law provides that any alien who: 1) enters or attempts to enter the U.S. at any time or place other than as designated by immigration officers; 2) eludes examination by immigration officers; or 3) enters or attempts to enter the U.S. by a willfully false or misleading representation is guilty of *improper entry by an alien*. For the first commission of the offense, the person is fined, imprisoned up to six months, or both, and for a subsequent offense, is fined, imprisoned up to 2 years, or both ([8 U.S.C. § 1325](#)).

Provisions

Illegal Border Crossings Into Arizona

1. Makes an alien entering or attempting to enter Arizona directly from a foreign nation at any location other than a lawful port of entry (Illegal Entry) unlawful and a class 1 misdemeanor. (Sec. 3)
2. Stipulates that Illegal Entry is a class 6 felony if the person has been previously convicted of Illegal Entry. (Sec. 3)
3. Establishes that a person may use, as an affirmative defense to Illegal Entry, the following: a) having an asylum claim granted by the Federal Government; b) not having violated federal immigration law; or c) having been approved for the Deferred Action For Childhood Arrivals Program (DACA) between June 15, 2012, and July 16, 2021. (Sec. 3)
4. Stipulates that the Deferred Action for Parents of Americans and Lawful Permanent Residents Program (DAPA), and any other program materially similar to DACA or DAPA, does not provide an affirmative defense for Illegal Entry. (Sec. 3)
5. Makes being an alien and entering, or attempting to enter, or being found at any time within the state (Illegal Reentry) unlawful, if the person has:
 - a) been denied admission to or excluded, deported or removed from the United States; or
 - b) departed from the United States while an order of exclusion deportation or removal is outstanding. (Sec. 3)
6. Specifies that Illegal Reentry is a class 1 misdemeanor, except that it is a class 2 felony if the person was removed subsequent to a conviction for the commission of a felony, and that it is a class 3 felony if:

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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- a) The person's removal was subsequent to a conviction of two or more misdemeanors involving drugs or crimes against a person;
 - b) The person was excluded under federal law as an inadmissible alien due to engagement or association with terrorist activities;
 - c) The person was removed under federal law provisions for removal of alien terrorists;
 - d) The person was removed by federal authorities subsequent to a term of imprisonment. (Sec. 3)
7. Makes being an alien and refusing to comply with an order to return to a foreign nation (Refusal to Return) a class 2 felony. (Sec. 3)
 8. Stipulates that all the following must occur for a person to commit Refusal to Return:
 - a) The person is charged with, or convicted of, Illegal Entry or Illegal Reentry;
 - b) A judge issues an order for the person to return to the foreign nation from which he entered or attempted to enter; and
 - c) The person refuses to comply with the order. (Sec. 3)
 9. Prohibits arresting or detaining a person for Illegal Entry, Illegal Reentry or Refusal to Return if he is on the premises of a: a) public or private school; b) church, synagogue or other place of worship; or c) healthcare facility to receive medical treatment. (Sec. 3)
 10. Prohibits a court from abating the prosecution of a person for Illegal Entry, Illegal Reentry or Refusal to Return on the basis that a federal determination regarding his immigration status is pending. (Sec. 3)
 11. Disqualifies a person convicted of Illegal Entry, Illegal Reentry or Refusal to Return from being eligible for community supervision. (Sec. 2)

Order to Return to a Foreign Nation

12. Permits a magistrate, after a person has been arrested, if the magistrate determines that there is probable cause to arrest the person for Illegal Entry or Illegal Reentry, to release the person from custody and issue a written *order requiring the person to return to the foreign nation from which he entered or attempted to enter* (Order to Return). (Sec. 3)
13. Permits a judge, instead of continuing a prosecution or entering an adjudication for Illegal Entry or Illegal Reentry, to dismiss the charges and issue an Order to Return. (Sec. 3)
14. Allows an Order to Return to be issued if all the following apply:
 - a) The person agrees to the order;
 - b) The person has not previously been convicted of Illegal Entry, Illegal Reentry or Refusal to Return;
 - c) The person has not previously received an Order to Return;
 - d) The person is not charged with any other felony or class 1 misdemeanor; and
 - e) Law enforcement has collected fingerprints and other identifying information from the person and cross-references the information with relevant databases to identify potential threats to national security. (Sec. 3)
15. Requires an Order to Return to include: a) provision of transportation to a port of entry; and b) the law enforcement entity responsible for monitoring compliance with the order. (Sec. 3)
16. Mandates, if a person is convicted of Illegal Entry, Illegal Reentry or Refusal to Return, that the judge is to issue an Order to Return, which order will take effect upon completion of the person's term of imprisonment. (Sec. 3)

17. Outlines filing and reporting requirements for an Order to Return. (Sec. 3)

Civil Immunity

18. Provides that local government officials, local government employees, local government contractors (Local Personnel), elected state officials, appointed state officials, state employees and state contractors (State Personnel) are immune from civil liability for damages arising from a cause of action under Arizona law resulting from an action taken to enforce this Act. (Sec. 1)

19. Instructs a local government to indemnify Local Personnel for damages, arising from a federal cause of action resulting from an action taken to enforce this Act, in an amount not to exceed:

- a) \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death; and
- b) \$10,000 for a single occurrence of property damage. (Sec. 1)

20. Instructs the state to indemnify State Personnel for damages, arising from a federal cause of action resulting from an action taken to enforce this Act, without financial limit. (Sec. 1)

21. Stipulates that the civil immunity and the indemnification for damages do not apply if a court or jury determine that the Local Personnel or State Personnel were acting in bad faith, acting with conscious indifference or acting with recklessness. (Sec. 1)

22. Directs a local government to indemnify Local Personnel, and the state to indemnify State Personnel, for reasonable attorney fees incurred in the defense of a criminal prosecution against the personnel for enforcing this Act. (Sec. 1)

23. Requires the Attorney General to represent State Personnel in any case where said personnel may be entitled to indemnification under this Act. (Sec. 1)

24. Specifies that this Act does not waive statutory limits on damages under state law. (Sec. 1)

25. Requires a civil action brought against a person, who may be entitled to immunity or indemnification under this Act, to be appealed directly to the Arizona Supreme Court. (Sec. 1)

26. Stipulates that the immunity and indemnification provisions of this Act do not affect any other state laws. (Sec. 1)

Miscellaneous

27. Directs the Central State Repository to collect the fingerprints and records of persons who were convicted of Illegal Entry or Illegal Reentry or who had an Order to Return issued against them. (Sec. 6)

28. Defines *alien* and *port of entry*. (Sec. 3)

29. Contains a legislative findings clause. (Sec. 7)

30. Makes conforming changes. (Sec. 1, 4, 5)