



Arizona Anti-Immigrant Law SB 1070 Amended by HB 2162

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As you all know well from a variety of sources, Arizona enacted an immigration law (SB 1070) on April 23rd. A week later, the legislature passed and Governor Brewer signed into law HB 2162 which modifies SB 1070. A special thanks to Ronald Johnson of the Arizona Catholic Conference for alerting me to this new development. This memorandum briefly notes some of the changes that HB 2162 makes to SB 1070.

In my prior memorandum, I explained the basic provisions of five major sections within SB 1070. These include: (1) Enforcement of Immigration Laws, (2) Willful Failure to Complete or Carry an Alien Registration Document, (3) Smuggling, (4) Unlawfully Stopping to Hire and Pick Up Passengers for Work, (5) Unlawfully Transporting or Harboring Unlawful Aliens, (6) Arrest by Officer Without a Warrant, and, (7) Knowingly Employing Unauthorized Aliens/Employer Sanctions. As shown below, HB 2162 amends a portion of four of these sections. I have listed the affected sections below and noted the changes.

Enforcement of Immigration Laws

1. SB 1070 provided that law enforcement officials and law enforcement agencies must make a reasonable attempt to determine the immigration status of a person they come in **lawful contact** with if they have reasonable suspicion that the person lacks lawful status in the US, except if the determination may hinder or obstruct an investigation.

HB 2162 changes “**lawful contact**” to “**lawful stop, detention, or arrest.**”

Additionally, HB 2162 stipulates that a lawful stop, detention or arrest must be **in the enforcement of any other law or ordinance of a county, city or town of this state.**

Also, HB 2162 stipulates that law enforcement officials must have reasonable suspicion that the person is an alien **and** is unlawfully present in the US. HB 2162 adds the term “**and.**”

Thus, the law states: “For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation.”

Importantly, these changes were made by the Arizona legislature to ensure that victims of crimes and witnesses to crimes would not be reluctant to come forward and contact the police and/or other law enforcement agencies.

2. In this same section, HB 2162 removes the word “solely” from the prohibition on discriminatory enforcement. Thus, the provision now reads, “A law enforcement official or agency of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution.”

3. SB 1070 provides that a legal resident of Arizona can bring an action in superior court to challenge officials and agencies of the state, counties, cities, towns or other political subdivisions that adopt or implement a policy or practice that limits or

restricts the enforcement of federal immigration laws to less than the full extent permitted by law. The law sets forth penalties (range \$1,000 to \$5,000) in the event that a judge finds that an entity violated this section.

HB 2162 removes the term “**or practice**” from this provision.

In addition, HB 2162 specifies that 8 U.S.C. Section 1373 and 8 U.S.C. Section 1644 are included in the federal immigration laws referred to in this section.

Also, HB 2162 changes the civil penalty range from \$1000 to \$500. Thus, the entity that is found to violate this section can be fined not less than \$500 and not more than \$5,000 for each day the policy has remained in effect after the filing of an action.

Thus, the law provides: “A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code Section 1372 and 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than five hundred dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.”

Enforcement of Immigration Laws, Unlawfully Stopping to Hire and Pick Up Passengers for Work, and Unlawfully Transporting or Harboring Unlawful Aliens

In the implementation of these three sections, HB 2162 stipulates that the immigration status of an individual may be determined by:

- A law enforcement officer who is authorized by the federal government to verify or ascertain an alien’s immigration status.
- US Immigration and Customs Enforcement (ICE) or the US Customs and Border Protection (CBP) pursuant to 8 U.S.C. Section 1373(c).

Willful Failure to Complete or Carry an Alien Registration Document, Unlawfully Stopping to Hire and Pick Up Passengers for Work, and Unlawfully Transporting or Harboring Unlawful Aliens

HB 2162 adds anti-discriminatory language to each of these three sections. The additional language provides: “A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the US or Arizona Constitution.”

Willful Failure to Complete or Carry an Alien Registration Document

SB 1070 includes a section that makes it a state crime to willfully fail to complete or carry an alien registration document. SB 1070 extensively discusses criminal penalties and additional assessments that can be imposed on anyone found to have violated the law.

HB 2162 removes the additional assessments for those found to be in violation of this section.

HB 2162 also eliminates certain violations that were class 3 and class 4 felonies.

HB 2162 limits fines for first time violations to \$100.

HB 2162 prohibits the courts from sentencing first time violators to more than 20 days in jail.

HB 1262 prohibits the courts from sentencing second or subsequent violations to more than 30 days in jail.

Conclusion

As noted above, HB 2162 improves SB 1070. Most significantly, it makes clear that race, color, or national origin may not be considered by law enforcement personnel as they carryout the law. It also makes clear that law enforcement officials can inquire about the immigration status only of those individuals that they lawfully stop, detain, or arrest.

Contact Information

Please feel free to contact me with your needs for analysis and assistance with immigration-related bills. Additionally, if you have any questions or comments about the Arizona law or any other state and local enforcement measure, please let me know.

My best, Karen

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