

# ACLU of Arizona Fact Sheet on HB 2625

## An Ill-Conceived Restriction on Housing for Arizonans

1. Bad for Landlords: *This bill creates a nightmare for landlords and leaves them vulnerable to lawsuits based on federal anti-discrimination laws.*

This bill puts landlords in the difficult position of either violating a state law and facing unreasonable penalties, or violating multiple federal anti-discrimination laws if they comply. Private landlords are not trained in immigration-related document review and verification, yet this bill would compel them to assess whether a tenant has presented proper documentation. As a result, landlords who attempt to comply with this bill would deny rental housing to people based on their alienage, or because they look or sound “foreign,” impinging on at least two major federal anti-discrimination laws. Under the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1981, private landlords cannot discriminate against tenants based on race, national origin or alienage. Arizona cannot immunize landlords from liability under federal law.

2. Hurts U.S. Citizens, Lawful Permanent Residents and Others Authorized to be in the U.S.: *The limited categories of acceptable documents enumerated in this bill would result in the eviction of U.S. citizens, lawful permanent residents, tourists, and others with authorization to be in the United States.*

Although the proponents of this bill profess to target only those whose presence in the United States is not authorized, the document scheme set forth by this bill will ensnare a number of tenants who are lawfully present in the United States, including U.S. citizens, lawful permanent residents, tourists, asylum seekers, and others.

A recent national study shows that as many as 7 percent of U.S. citizens do not have ready access to government-issued photo identification or to U.S. passports, naturalization papers, or birth certificates. “Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification,” *Brennan Center for Justice at NYU School of Law* (November 2006). The number almost doubles for low-income citizens, who are more likely to be renters. Moreover, documentation proving citizenship often does not reflect the citizen’s current name. Studies also show that the elderly and disabled populations are much more likely to lack government-issued photo identification, like drivers’ licenses, or ready access to birth certificates or citizenship documentation.

The flawed list of documents deemed acceptable by this legislation also leaves out a number of non-citizens who are authorized to be in the United States, including “green-card” holders, tourists from countries that do not require a visa to visit the United States, and asylum seekers, to name just a few. Immigration law is complex, and there are numerous categories of persons with authorization to be in the United States who are not captured in the limited list enumerated by this bill.

3. Imposes Major Enforcement Costs on the State: *This bill has the potential to cost the state of Arizona millions to enforce.*

The enforcement mechanism contemplated by this legislation would have the Attorney General or local county or city attorney prosecute landlords in the courts. This would clog the state courts with costly lawsuits to combat alleged violations of federal immigration laws. It is the federal government's responsibility to enforce federal immigration laws, not the state of Arizona's. Moreover, immigration law is extremely complex, and the unavoidable mistakes made by ill-prepared state and local officials in attempting to determine a tenant's citizenship or immigration status can be costly, resulting in lawsuits and protracted litigation, especially if landlords and tenants are deprived of their property and housing based on an erroneous determination of federal immigration status by state and local government officials.

4. Pre-Empted by Federal Law: *To date, not one anti-immigrant housing ordinance has withstood constitutional scrutiny anywhere in the country.*

Over the past three years, a number of local jurisdictions have attempted to take immigration enforcement into their own hands by enacting restrictive housing ordinances directed at undocumented immigrants. To date, not one of those laws has withstood constitutional scrutiny. Either the federal courts have enjoined such laws, or the local jurisdictions have withdrawn them when faced with the insurmountable legal arguments as to why such laws violate the Supremacy Clause of the U.S. Constitution. Places where courts have enjoined these housing-related laws from taking effect include Hazleton, Pennsylvania, Farmer's Branch, Texas, and Escondido, California. The courts have found that local housing restrictions based on immigration status conflict with and disrupt the federal system for regulating the presence of immigrants in the United States. Similarly, this bill would be pre-empted by federal law.

5. Constitutionally Suspect: *This bill raises serious concerns not just around pre-emption, but also constitutionally guaranteed rights to Due Process and Equal Protection.*

Like many of the failed restrictive housing ordinances around the country that have withered upon review by the courts, this bill raises serious concerns about procedural due process guaranteed by the Fourteenth Amendment to the U.S. Constitution. The legislation would deprive tenants of their liberty and use of property without any of the procedural protections required by federal law, including notice and an opportunity to be heard. In addition, the inevitable discriminatory impact of this bill against Latinos, other immigrants, and vulnerable populations is likely to result in constitutional violations of Equal Protection under the law.