

REFERENCE TITLE: fair and legal employment act

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2779

Introduced by
Representatives Pearce, Barnes, Boone, Burges, Farnsworth, Groe, Kavanagh,
Murphy, Yarbrough, Senators Bee, Blendu, Johnson, Verschoor:
Representatives Anderson, Biggs, Clark, McClure, McComish, McLain,
Nichols, Robson, Stump, Weiers J, Senators Burns, Gould, Gray L, Harper
(with permission of committee on Rules)

AN ACT

AMENDING SECTION 13-2009, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; AMENDING TITLE 26, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 26-103; AMENDING SECTION 41-763, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING TITLE 41, CHAPTER 23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2505; AMENDING SECTION 43-1021, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-2009, Arizona Revised Statutes, is amended to
3 read:
4 13-2009. Aggravated taking identity of another person or
5 entity; classification
6 A. A person commits aggravated taking the identity of another person
7 or entity if the person knowingly takes, purchases, manufactures, records,
8 possesses or uses any personal identifying information or entity identifying
9 information of either:
10 1. Five or more other persons or entities, including real or
11 fictitious persons or entities, without the consent of the other persons or
12 entities, with the intent to obtain or use the other persons' or entities'
13 identities for any unlawful purpose or to cause loss to the persons or
14 entities whether or not the persons or entities actually suffer any economic
15 loss.
16 2. Another person or entity, including a real or fictitious person or
17 entity, without the consent of that other person or entity, with the intent
18 to obtain or use the other person's or entity's identity for any unlawful
19 purpose and causes another person or entity to suffer an economic loss of
20 three thousand dollars or more.
21 3. ANOTHER PERSON, INCLUDING A REAL OR FICTITIOUS PERSON, WITH THE
22 INTENT TO OBTAIN EMPLOYMENT.
23 B. In an action for aggravated taking the identity of another person
24 or entity under subsection A, paragraph 1 of this section, proof of
25 possession out of the regular course of business of the personal identifying
26 information or entity identifying information of five or more other persons
27 or entities may give rise to an inference that the personal identifying
28 information or entity identifying information of the five or more other
29 persons or entities was possessed for an unlawful purpose.
30 C. This section does not apply to a violation of section 4-241 by a
31 person who is under twenty-one years of age.
32 D. Aggravated taking the identity of another person or entity is a
33 class 3 felony.
34 Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is amended by
35 adding article 2, to read:
36 ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS
37 23-211. Definitions
38 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
39 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
40 STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR PURPOSES OF
41 OPERATING A BUSINESS IN THIS STATE.
42 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
43 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
44 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

1 IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS
2 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

3 D. IF THE ATTORNEY GENERAL DETERMINES THAT A BUSINESS ENTITY HAS FILED
4 A FALSE SWORN AFFIDAVIT UNDER THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY
5 THE COUNTY ATTORNEY TO PROSECUTE THE BUSINESS ENTITY FOR FILING A FALSE SWORN
6 AFFIDAVIT.

7 E. ON A CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT SHALL
8 REPORT THE CONVICTION TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL
9 DETERMINE THE APPROPRIATE ACTION PURSUANT TO SECTION 23-213 AND NOTIFY THE
10 APPROPRIATE AGENCY.

11 23-213. Employment of unauthorized aliens; enforcement;
12 suspension of license

13 A. ON RECEIPT OF A SIGNED WRITTEN COMPLAINT THAT A BUSINESS ENTITY
14 ALLEGEDLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY
15 ATTORNEY SHALL INVESTIGATE WHETHER THE BUSINESS ENTITY HAS VIOLATED SECTION
16 23-212. THE COMPLAINT SHALL INDICATE THE NAME OF THE BUSINESS ENTITY THAT
17 ALLEGEDLY VIOLATED SECTION 23-212, THE SPECIFIC ACTIONS THAT CONSTITUTE THE
18 ALLEGED VIOLATION AND THE DATE AND LOCATION OF THE ALLEGED VIOLATION. THE
19 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE A COMPLAINT THAT IS
20 SOLELY OR PRIMARILY BASED ON NATIONAL ORIGIN, ETHNICITY OR RACE.

21 B. WITHIN THREE BUSINESS DAYS AFTER RECEIVING A COMPLAINT UNDER
22 SUBSECTION A OF THIS SECTION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL
23 NOTIFY THE BUSINESS ENTITY OF THE COMPLAINT AND REQUEST THAT THE BUSINESS
24 ENTITY PROVIDE THE IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN. THE BUSINESS
25 ENTITY SHALL PROVIDE THE IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN WITHIN
26 THREE BUSINESS DAYS AFTER RECEIVING THE REQUEST FROM THE ATTORNEY GENERAL OR
27 COUNTY ATTORNEY.

28 C. AFTER RECEIVING THE IDENTITY OF AN ALLEGED UNAUTHORIZED ALIEN UNDER
29 SUBSECTION B OF THIS SECTION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL
30 SUBMIT THE IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN FOR VERIFICATION TO THE
31 FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373. AFTER
32 RECEIVING THE RESULTS OF THE VERIFICATION FROM THE FEDERAL GOVERNMENT, THE
33 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE BUSINESS ENTITY EITHER
34 THAT THE COMPLAINT IS VALID OR THAT THE COMPLAINT IS DISMISSED. IF THE
35 COMPLAINT IS VALID, THE BUSINESS ENTITY HAS THREE BUSINESS DAYS TO CORRECT
36 THE VIOLATION IN THE MANNER PRESCRIBED IN SUBSECTION D OF THIS SECTION. IF
37 THE BUSINESS ENTITY FAILS TO CORRECT THE VIOLATION, THE ATTORNEY GENERAL OR
38 COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY TO SUSPEND THE LICENSE OF
39 THE BUSINESS ENTITY AND THE APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE
40 LICENSE.

41 D. A BUSINESS ENTITY MAY CORRECT A VIOLATION UNDER SUBSECTION C OF
42 THIS SECTION BY DOING EITHER OF THE FOLLOWING:

43 1. TERMINATING THE EMPLOYMENT OF THE UNAUTHORIZED ALIEN. IF THE
44 TERMINATION IS CHALLENGED IN SUPERIOR COURT, THE REQUIRED THREE BUSINESS DAYS
45 TO CORRECT THE VIOLATION UNDER SUBSECTION C OF THIS SECTION SHALL BE TOLLED

1 WHILE THE CHALLENGE IS ADJUDICATED. FOR ANY ACTION IN SUPERIOR COURT UNDER
2 THIS PARAGRAPH, THE COURT SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE
3 HEARING AT THE EARLIEST PRACTICABLE DATE.

4 2. ACQUIRING ADDITIONAL INFORMATION FROM THE EMPLOYEE TO VERIFY THE
5 EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE BASIC PILOT PROGRAM, AND
6 THE VERIFICATION DETERMINES THAT THE EMPLOYEE IS AUTHORIZED TO WORK IN THE
7 UNITED STATES. THE REQUIRED THREE BUSINESS DAYS TO CORRECT THE VIOLATION
8 UNDER SUBSECTION C OF THIS SECTION SHALL BE TOLLED WHILE THE VERIFICATION IS
9 CONDUCTED UNDER THIS PARAGRAPH.

10 E. IF THE BUSINESS ENTITY FAILS TO PROVIDE THE IDENTITY OF THE ALLEGED
11 UNAUTHORIZED ALIEN WITHIN THE REQUIRED THREE BUSINESS DAYS PURSUANT TO
12 SUBSECTION B OF THIS SECTION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL
13 NOTIFY THE APPROPRIATE AGENCY TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY
14 AND THE APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE. THE
15 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY AND
16 THE APPROPRIATE AGENCY SHALL REINSTATE A BUSINESS ENTITY'S SUSPENDED LICENSE
17 UNDER THIS SUBSECTION IF THE BUSINESS ENTITY FILES A SIGNED AFFIDAVIT WITH
18 THE ATTORNEY GENERAL OR COUNTY ATTORNEY CONTAINING THE FOLLOWING:

19 1. A DESCRIPTION OF THE BUSINESS ENTITY'S ACTIONS TO CORRECT THE
20 VIOLATION.

21 2. A LIST OF THE NAMES AND ADDRESSES OF THE UNAUTHORIZED ALIENS THAT
22 WERE THE BASIS OF THE COMPLAINT.

23 3. AN AFFIRMATION THAT THE BUSINESS ENTITY IS ENROLLED IN AND IS
24 PARTICIPATING TO THE FULLEST EXTENT IN THE BASIC PILOT PROGRAM.

25 F. FOR A SECOND VIOLATION UNDER THIS SECTION, THE ATTORNEY GENERAL OR
26 COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY TO SUSPEND THE LICENSE OF
27 THE BUSINESS ENTITY AND THE APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE
28 LICENSE. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT NOTIFY THE
29 APPROPRIATE AGENCY TO REINSTATE THE BUSINESS LICENSE UNTIL THE BUSINESS
30 ENTITY TAKES CORRECTIVE ACTION PURSUANT TO SUBSECTION D OF THIS SECTION AND
31 FILES THE SIGNED AFFIDAVIT THAT IS REQUIRED UNDER SUBSECTION E OF THIS
32 SECTION.

33 G. FOR A THIRD VIOLATION UNDER THIS SECTION, THE ATTORNEY GENERAL OR
34 COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY TO REVOKE THE LICENSE OF
35 THE BUSINESS ENTITY AND THE APPROPRIATE AGENCY SHALL PERMANENTLY REVOKE THE
36 LICENSE.

37 H. ON COMPLETION OF THE PROCESSING OF A VALID COMPLAINT PURSUANT TO
38 THIS SECTION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL FORWARD A COPY OF
39 THE COMPLAINT AND ANY ASSOCIATED DOCUMENTS TO THE UNITED STATES IMMIGRATION
40 AND CUSTOMS ENFORCEMENT.

41 I. NOTWITHSTANDING ANY OTHER LAW, ANY COUNTY, CITY OR TOWN THAT FAILS
42 TO SUSPEND A LICENSE AS ORDERED BY THE ATTORNEY GENERAL UNDER THIS SECTION
43 SHALL NOT RECEIVE ANY FUNDING FROM THIS STATE.

44 J. ANY BUSINESS ENTITY THAT IS SUBJECT TO ENFORCEMENT UNDER THIS
45 SECTION MAY CHALLENGE THE ENFORCEMENT IN SUPERIOR COURT. FOR ANY ACTION IN

1 SUPERIOR COURT UNDER THIS SECTION, THE COURT SHALL EXPEDITE THE ACTION,
2 INCLUDING ASSIGNING THE HEARING AT THE EARLIEST PRACTICABLE DATE. ON
3 DETERMINING WHETHER A PERSON IS AN UNAUTHORIZED ALIEN, THE COURT SHALL
4 CONSIDER ONLY THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO 8 UNITED
5 STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S DETERMINATION CREATES
6 A REBUTTABLE PRESUMPTION OF THE PERSON'S LAWFUL STATUS. THE COURT MAY TAKE
7 JUDICIAL NOTICE OF THE FEDERAL GOVERNMENT'S DETERMINATION AND MAY REQUEST THE
8 FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL VERIFICATION PURSUANT
9 TO 8 UNITED STATES CODE SECTION 1373(c).

10 Sec. 3. Title 26, chapter 1, article 1, Arizona Revised Statutes, is
11 amended by adding section 26-103, to read:

12 26-103. Immigration enforcement fund

13 THE IMMIGRATION ENFORCEMENT FUND IS ESTABLISHED CONSISTING OF
14 ASSESSMENTS DEPOSITED PURSUANT TO SECTIONS 23-212 AND 41-1080.01. THE
15 DEPARTMENT OF MILITARY AFFAIRS AND EMERGENCY MANAGEMENT SHALL ADMINISTER THE
16 FUND. MONIES IN THE FUND:

- 17 1. ARE SUBJECT TO LEGISLATIVE APPROPRIATION.
- 18 2. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING
19 OF APPROPRIATIONS.
- 20 3. SHALL BE USED TO REIMBURSE AGENCIES AND DEPARTMENTS OF THIS STATE
21 AND OF POLITICAL SUBDIVISIONS OF THIS STATE FOR COSTS INCURRED IN ENFORCING
22 IMMIGRATION LAWS.

23 Sec. 4. Section 41-763, Arizona Revised Statutes, is amended to read:
24 41-763. Powers and duties of the director relating to personnel

25 The director shall:

- 26 1. Appoint employees necessary to perform the duties prescribed by
27 this article.
- 28 2. Have authority for developing and administering a program of
29 personnel administration for the state service in conformance with the
30 personnel rules.
- 31 3. Have authority to establish such offices as may be necessary to
32 maintain an effective and economical program of personnel administration.
- 33 4. Have the power to deputize employees in various state agencies
34 where certain of the functions of personnel administration can be performed
35 by such deputies.
- 36 5. Make an annual report and recommendation to the legislature and the
37 joint legislative budget committee as provided in section 41-763.01.
- 38 6. Adopt rules relating to personnel and personnel administration.
- 39 7. Subject to legislative appropriation, have the authority to
40 contract for the services of consultants necessary to perform the annual
41 salary plan and salary plan adjustment recommendations.
- 42 8. Establish a mandatory program of annual personnel management
43 training for all state employees with supervisory or managerial
44 responsibility that is appropriate to the nature and scope of the employees'
45 supervisorial responsibilities. The director may waive the annual mandatory

1 training on a case by case basis. The training shall include at least the
2 following subjects:

- 3 (a) Basic employee supervisory or managerial skills.
- 4 (b) Establishing employee objectives and performance measures.
- 5 (c) Measuring employee performance and the use of performance
6 evaluation methods.
- 7 (d) Employee discipline training and discipline procedures.
- 8 (e) Other subjects as determined by the director.

9 9. VERIFY THE AUTHORIZATION FOR EMPLOYMENT IN THE UNITED STATES OF
10 EVERY STATE EMPLOYEE THROUGH THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM
11 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
12 AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM. THIS
13 PARAGRAPH APPLIES ONLY TO EMPLOYEES WHO ARE HIRED AFTER THIS STATE HAS AGREED
14 TO THE MEMORANDUM OF UNDERSTANDING THAT IS REQUIRED TO PARTICIPATE IN THE
15 PILOT PROGRAM.

16 Sec. 5. Title 41, chapter 6, Arizona Revised Statutes, is amended by
17 adding article 7.2, to read:

18 ARTICLE 7.2. LICENSING ELIGIBILITY

19 41-1080. Definitions

20 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

21 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
22 STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR PURPOSES OF
23 OPERATING A BUSINESS IN THIS STATE.

24 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
25 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
26 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

27 3. "BUSINESS ENTITY" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT
28 HAS IN ITS EMPLOY ONE OR MORE INDIVIDUALS PERFORMING SERVICES FOR IT IN
29 EMPLOYMENT, WHETHER FOR PROFIT OR NOT FOR PROFIT. BUSINESS ENTITY INCLUDES
30 SELF-EMPLOYED PERSONS.

31 4. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL,
32 REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY
33 LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS
34 IN THIS STATE.

35 41-1080.01. Licensing; employee verification; signed affidavit;
36 violation; classification

37 A. BEFORE RECEIVING A LICENSE OR A RENEWAL OF A LICENSE FROM AN
38 AGENCY, A BUSINESS ENTITY SHALL FILE A SIGNED SWORN AFFIDAVIT WITH THE AGENCY
39 THAT STATES THAT THE BUSINESS ENTITY DOES NOT KNOWINGLY EMPLOY AN
40 UNAUTHORIZED ALIEN AND THAT THE BUSINESS ENTITY WILL NOT DIRECT ANY OTHER
41 PERSON TO EMPLOY AN UNAUTHORIZED ALIEN. AN AGENCY SHALL NOT ISSUE OR RENEW A
42 LICENSE TO ANY BUSINESS ENTITY THAT FAILS TO SUBMIT THE SIGNED AFFIDAVIT.

43 B. A PERSON OR BUSINESS ENTITY COMMITS FALSE SWEARING UNDER THIS
44 SECTION BY FILING A FALSE SWORN AFFIDAVIT, BELIEVING IT TO BE FALSE. FALSE
45 SWEARING UNDER THIS SECTION IS:

1 1. FOR A FIRST VIOLATION, A CLASS 6 FELONY. THE PERSON OR BUSINESS
2 ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF AT LEAST FIVE THOUSAND DOLLARS
3 BUT NOT MORE THAN FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION
4 ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT
5 SUBJECT TO ANY SURCHARGE.

6 2. FOR A SECOND VIOLATION, A CLASS 6 FELONY, AND THE COURT SHALL NOT
7 ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR PURSUANT TO SECTION
8 13-702, SUBSECTION G. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL
9 ASSESSMENT OF AT LEAST TEN THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED
10 THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND
11 ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY
12 SURCHARGE.

13 3. FOR A THIRD VIOLATION, A CLASS 5 FELONY. THE PERSON OR BUSINESS
14 ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE AT LEAST FIFTEEN THOUSAND
15 DOLLARS BUT NOT MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS TO BE DEPOSITED
16 IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS
17 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

18 C. IF THE ATTORNEY GENERAL DETERMINES THAT A BUSINESS ENTITY HAS FILED
19 A FALSE SWORN AFFIDAVIT UNDER THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY
20 THE COUNTY ATTORNEY TO PROSECUTE THE BUSINESS ENTITY FOR FILING A FALSE SWORN
21 AFFIDAVIT.

22 D. ON A CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT SHALL
23 REPORT THE CONVICTION TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL
24 DETERMINE THE APPROPRIATE ACTION PURSUANT TO SECTION 23-213 AND NOTIFY THE
25 APPROPRIATE AGENCY.

26 Sec. 6. Title 41, chapter 23, article 1, Arizona Revised Statutes, is
27 amended by adding section 41-2505, to read:

28 41-2505. Awarded contracts; employee verification; definition

29 A. A PROCUREMENT OFFICER OF THIS STATE SHALL NOT AWARD A CONTRACT
30 UNDER THIS CHAPTER THAT EXCEEDS TEN THOUSAND DOLLARS TO ANY CONTRACTOR OR
31 SUBCONTRACTOR UNLESS THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEES OF THE
32 CONTRACTOR OR SUBCONTRACTOR HAS BEEN VERIFIED BY THE CONTRACTOR OR
33 SUBCONTRACTOR THROUGH THE BASIC PILOT PROGRAM. THE CONTRACTOR OR
34 SUBCONTRACTOR SHALL FILE A SIGNED AFFIDAVIT WITH THE PROCUREMENT OFFICER THAT
35 STATES THAT THE CONTRACTOR OR SUBCONTRACTOR IS ENROLLED AND PARTICIPATES IN
36 THE BASIC PILOT PROGRAM.

37 B. FOR THE PURPOSES OF THIS SECTION, "BASIC PILOT PROGRAM" MEANS THE
38 BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE
39 UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY
40 ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

41 Sec. 7. Section 43-1021, Arizona Revised Statutes, is amended to read:

42 43-1021. Additions to Arizona gross income

43 In computing Arizona adjusted gross income, the following amounts shall
44 be added to Arizona gross income:

- 1 1. A beneficiary's share of the fiduciary adjustment to the extent
2 that the amount determined by section 43-1333 increases the beneficiary's
3 Arizona gross income.
- 4 2. An amount equal to the "ordinary income portion" of a lump sum
5 distribution that was excluded from federal adjusted gross income pursuant to
6 section 402(d) of the internal revenue code.
- 7 3. The amount of interest income received on obligations of any state,
8 territory or possession of the United States, or any political subdivision
9 thereof, located outside the state of Arizona, reduced, for tax years
10 beginning from and after December 31, 1996, by the amount of any interest on
11 indebtedness and other related expenses that were incurred or continued to
12 purchase or carry those obligations and that are not otherwise deducted or
13 subtracted in arriving at Arizona gross income.
- 14 4. Annuity income received during the taxable year to the extent that
15 the sum of the proceeds received from such annuity in all taxable years prior
16 to and including the current taxable year exceeds the total consideration and
17 premiums paid by the taxpayer. This paragraph applies only to those
18 annuities with respect to which the first payment was received prior to
19 December 31, 1978.
- 20 5. The excess of a partner's share of partnership taxable income
21 required to be included under chapter 14, article 2 of this title over the
22 income required to be reported under section 702(a)(8) of the internal
23 revenue code.
- 24 6. The excess of a partner's share of partnership losses determined
25 pursuant to section 702(a)(8) of the internal revenue code over the losses
26 allowable under chapter 14, article 2 of this title.
- 27 7. The amount by which the adjusted basis of property described in
28 this paragraph and computed pursuant to the internal revenue code exceeds the
29 adjusted basis of such property computed pursuant to this title and the
30 income tax act of 1954, as amended. This paragraph shall apply to all
31 property which is held for the production of income and which is sold or
32 otherwise disposed of during the taxable year, except depreciable property
33 used in a trade or business.
- 34 8. The amount of depreciation or amortization of costs of any capital
35 investment that is deducted pursuant to section 167 or 179 of the internal
36 revenue code by a qualified defense contractor with respect to which an
37 election is made to amortize pursuant to section 43-1024.
- 38 9. The amount of gain from the sale or other disposition of a capital
39 investment which a qualified defense contractor has elected to amortize
40 pursuant to section 43-1024.
- 41 10. Amounts withdrawn from the Arizona state retirement system, the
42 corrections officer retirement plan, the public safety personnel retirement
43 system, the elected officials' retirement plan or a county or city retirement
44 plan by an employee upon termination of employment before retirement to the
45 extent they were deducted in arriving at Arizona taxable income in any year.

- 1 11. That portion of the net operating loss included in federal adjusted
2 gross income which has already been taken as a net operating loss for Arizona
3 purposes or which is separately taken as a subtraction under the special net
4 operating loss transition rule.
- 5 12. Any nonitemized amount deducted pursuant to section 170 of the
6 internal revenue code representing contributions to an educational
7 institution which denies admission, enrollment or board and room
8 accommodations on the basis of race, color or ethnic background except those
9 institutions primarily established for the education of American Indians.
- 10 13. The amount paid as taxes on property in this state with respect to
11 which a credit is claimed under section 43-1078.
- 12 14. Amounts withdrawn from a medical savings account by the individual
13 during the taxable year computed pursuant to section 220(f) of the internal
14 revenue code and not included in federal adjusted gross income.
- 15 15. Any amount of agricultural water conservation expenses that were
16 deducted pursuant to the internal revenue code for which a credit is claimed
17 under section 43-1084.
- 18 16. The amount by which the depreciation or amortization computed under
19 the internal revenue code with respect to property for which a credit was
20 taken under section 43-1080 exceeds the amount of depreciation or
21 amortization computed pursuant to the internal revenue code on the Arizona
22 adjusted basis of the property.
- 23 17. The amount by which the adjusted basis computed under the internal
24 revenue code with respect to property for which a credit was claimed under
25 section 43-1080 and which is sold or otherwise disposed of during the taxable
26 year exceeds the adjusted basis of the property computed under section
27 43-1080.
- 28 18. The amount by which the depreciation or amortization computed under
29 the internal revenue code with respect to property for which a credit was
30 taken under either section 43-1081 or 43-1081.01 exceeds the amount of
31 depreciation or amortization computed pursuant to the internal revenue code
32 on the Arizona adjusted basis of the property.
- 33 19. The amount by which the adjusted basis computed under the internal
34 revenue code with respect to property for which a credit was claimed under
35 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise
36 disposed of during the taxable year exceeds the adjusted basis of the
37 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as
38 applicable.
- 39 20. The deduction referred to in section 1341(a)(4) of the internal
40 revenue code for restoration of a substantial amount held under a claim of
41 right.
- 42 21. The amount by which a net operating loss carryover or capital loss
43 carryover allowable pursuant to section 1341(b)(5) of the internal revenue
44 code exceeds the net operating loss carryover or capital loss carryover
45 allowable pursuant to section 43-1029, subsection F.

1 22. Any amount deducted pursuant to section 170 of the internal revenue
2 code representing contributions to a school tuition organization or a public
3 school for which a credit is claimed under section 43-1089 or 43-1089.01.

4 23. Any amount deducted in computing Arizona gross income as expenses
5 for installing solar stub outs or electric vehicle recharge outlets in this
6 state with respect to which a credit is claimed pursuant to section 43-1090.

7 24. Any wage expenses deducted pursuant to the internal revenue code
8 for which a credit is claimed under section 43-1087 and representing net
9 increases in qualified employment positions for employment of temporary
10 assistance for needy families recipients.

11 25. Any amount deducted for conveying ownership or development rights
12 of property to an agricultural preservation district under section 48-5702
13 for which a credit is claimed under section 43-1081.02.

14 26. The amount of any depreciation allowance allowed pursuant to
15 section 167(a) of the internal revenue code to the extent not previously
16 added.

17 27. With respect to property for which an expense deduction was taken
18 pursuant to section 179 of the internal revenue code, the amount in excess of
19 twenty-five thousand dollars.

20 28. The amount of any deductions that are claimed in computing federal
21 adjusted gross income representing expenses for which a credit is claimed
22 under section 43-1075.

23 29. The amount by which the depreciation or amortization computed under
24 the internal revenue code with respect to property for which a credit was
25 taken under section 43-1090.01 exceeds the amount of depreciation or
26 amortization computed pursuant to the internal revenue code on the Arizona
27 adjusted basis of the property.

28 30. The amount by which the adjusted basis computed under the internal
29 revenue code with respect to property for which a credit was claimed under
30 section 43-1090.01 and which is sold or otherwise disposed of during the
31 taxable year exceeds the adjusted basis of the property computed under
32 section 43-1090.01.

33 31. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN
34 UNAUTHORIZED ALIEN WHO IS KNOWINGLY HIRED BY THE TAXPAYER AND THAT IS
35 DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION 162 OF THE INTERNAL REVENUE
36 CODE. FOR THE PURPOSES OF THIS PARAGRAPH, "UNAUTHORIZED ALIEN" MEANS AN
37 ALIEN WHO DOES NOT HAVE THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO
38 WORK IN THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE SECTION
39 1324a(h)(3).

40 Sec. 8. Appropriation; department of law

41 The sum of \$3,000,000 is appropriated from the state general fund in
42 fiscal year 2007-2008 to the department of law for the purposes provided in
43 this act.

1 Sec. 9. Severability

2 If any provision of this act or its application to any person or
3 circumstance is held invalid, the invalidity does not affect other provisions
4 or applications of this act that can be given effect without the invalid
5 provision or application, and to this end the provisions of this act are
6 severable.

7 Sec. 10. Legislative findings

8 The Legislature finds that this act complies with the requirements of 8
9 United States Code section 1324(a)(h)(2) by addressing employer sanctions
10 through licensure and similar means. Criminal penalties contained in this
11 act are associated exclusively with the state crime of false swearing on
12 application for a license or on the filing of articles of incorporation for a
13 business, not the act of employing unauthorized persons.

14 Sec. 11. Short title

15 This act shall be known as and may be cited as the "Arizona Fair and
16 Legal Employment Act."