

REFERENCE TITLE: fair and legal employment; referendum

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

## **HCR 2051**

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 Gould, Gray L, Harper (with  
permission of committee on Rules)

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO  
EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the  
2 Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,  
4 the following measure, relating to employment of unauthorized aliens, is  
5 enacted to become valid as a law if approved by the voters and on  
6 proclamation of the Governor:

7 AN ACT

8 AMENDING SECTION 13-2009, ARIZONA REVISED STATUTES; AMENDING  
9 TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE  
10 2; AMENDING TITLE 26, CHAPTER 1, ARTICLE 1, ARIZONA REVISED  
11 STATUTES, BY ADDING SECTION 26-103; AMENDING SECTION 41-763,  
12 ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARIZONA  
13 REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING TITLE 41,  
14 CHAPTER 23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING  
15 SECTION 41-2505; AMENDING SECTION 43-1021, ARIZONA REVISED  
16 STATUTES; RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS.

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

18 Section 1. Section 13-2009, Arizona Revised Statutes, is  
19 amended to read:

20 13-2009. Aggravated taking identity of another person or  
21 entity; classification

22 A. A person commits aggravated taking the identity of  
23 another person or entity if the person knowingly takes,  
24 purchases, manufactures, records, possesses or uses any personal  
25 identifying information or entity identifying information of  
26 either:

27 1. Five or more other persons or entities, including real  
28 or fictitious persons or entities, without the consent of the  
29 other persons or entities, with the intent to obtain or use the  
30 other persons' or entities' identities for any unlawful purpose  
31 or to cause loss to the persons or entities whether or not the  
32 persons or entities actually suffer any economic loss.

33 2. Another person or entity, including a real or  
34 fictitious person or entity, without the consent of that other  
35 person or entity, with the intent to obtain or use the other  
36 person's or entity's identity for any unlawful purpose and  
37 causes another person or entity to suffer an economic loss of  
38 three thousand dollars or more.

39 3. ANOTHER PERSON, INCLUDING A REAL OR FICTITIOUS PERSON,  
40 WITH THE INTENT TO OBTAIN EMPLOYMENT.

41 B. In an action for aggravated taking the identity of  
42 another person or entity under subsection A, paragraph 1 of this  
43 section, proof of possession out of the regular course of  
44 business of the personal identifying information or entity  
45 identifying information of five or more other persons or

1 entities may give rise to an inference that the personal  
2 identifying information or entity identifying information of the  
3 five or more other persons or entities was possessed for an  
4 unlawful purpose.

5 C. This section does not apply to a violation of section  
6 4-241 by a person who is under twenty-one years of age.

7 D. Aggravated taking the identity of another person or  
8 entity is a class 3 felony.

9 Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is  
10 amended by adding article 2, to read:

11 ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS

12 23-211. Definitions

13 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

17 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT  
18 VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED  
19 STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY  
20 ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

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

25 4. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS WORK OR A  
26 SERVICE OF ANY KIND OR CHARACTER FOR HIRE.

27 5. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE,  
28 APPROVAL, REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION  
29 THAT IS REQUIRED BY LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE  
30 PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

31 6. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE  
32 THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN  
33 THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE SECTION  
34 1324a(h)(3).

35 23-212. Employment of unauthorized aliens; prohibition;  
36 verification; affidavit; violation;  
37 classification

38 A. ANY BUSINESS ENTITY IN THIS STATE SHALL NOT KNOWINGLY  
39 EMPLOY AN UNAUTHORIZED ALIEN.

40 B. BEFORE FILING ARTICLES OF INCORPORATION UNDER TITLE 10  
41 OR A CERTIFICATE OF PARTNERSHIP, A PARTNERSHIP REGISTRATION OR  
42 ARTICLES OF ORGANIZATION UNDER TITLE 29, EVERY BUSINESS ENTITY  
43 SHALL FILE A SIGNED SWORN AFFIDAVIT WITH THE SECRETARY OF STATE  
44 THAT INDICATES THAT THE BUSINESS ENTITY DOES NOT KNOWINGLY  
45 EMPLOY AN UNAUTHORIZED ALIEN AND THAT THE BUSINESS ENTITY WILL

1 NOT DIRECT ANY OTHER PERSON TO EMPLOY AN UNAUTHORIZED ALIEN. ON  
2 RECEIPT OF THE AFFIDAVIT, THE SECRETARY OF STATE SHALL  
3 DISTRIBUTE TO THE BUSINESS ENTITY AN INFORMATIONAL PAMPHLET  
4 REGARDING THE BASIC PILOT PROGRAM AND FEDERAL IMMIGRATION LAWS.

5 C. A PERSON OR BUSINESS ENTITY COMMITS FALSE SWEARING  
6 UNDER THIS SECTION BY FILING A FALSE SWORN AFFIDAVIT, BELIEVING  
7 IT TO BE FALSE. FALSE SWEARING UNDER THIS SECTION IS:

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

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

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

28 D. IF THE ATTORNEY GENERAL DETERMINES THAT A BUSINESS  
29 ENTITY HAS FILED A FALSE SWORN AFFIDAVIT UNDER THIS SECTION, THE  
30 ATTORNEY GENERAL SHALL NOTIFY THE COUNTY ATTORNEY TO PROSECUTE  
31 THE BUSINESS ENTITY FOR FILING A FALSE SWORN AFFIDAVIT.

32 E. ON A CONVICTION FOR A VIOLATION OF THIS SECTION, THE  
33 COURT SHALL REPORT THE CONVICTION TO THE ATTORNEY GENERAL. THE  
34 ATTORNEY GENERAL SHALL DETERMINE THE APPROPRIATE ACTION PURSUANT  
35 TO SECTION 23-213 AND NOTIFY THE APPROPRIATE AGENCY.

36 23-213. Employment of unauthorized aliens; enforcement;  
37 suspension of license

38 A. ON RECEIPT OF A SIGNED WRITTEN COMPLAINT THAT A  
39 BUSINESS ENTITY ALLEGEDLY EMPLOYS AN UNAUTHORIZED ALIEN, THE  
40 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL INVESTIGATE WHETHER  
41 THE BUSINESS ENTITY HAS VIOLATED SECTION 23-212. THE COMPLAINT  
42 SHALL INDICATE THE NAME OF THE BUSINESS ENTITY THAT ALLEGEDLY  
43 VIOLATED SECTION 23-212, THE SPECIFIC ACTIONS THAT CONSTITUTE  
44 THE ALLEGED VIOLATION AND THE DATE AND LOCATION OF THE ALLEGED  
45 VIOLATION. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT

1 INVESTIGATE A COMPLAINT THAT IS SOLELY OR PRIMARILY BASED ON  
2 NATIONAL ORIGIN, ETHNICITY OR RACE.

3 B. WITHIN THREE BUSINESS DAYS AFTER RECEIVING A COMPLAINT  
4 UNDER SUBSECTION A OF THIS SECTION, THE ATTORNEY GENERAL OR  
5 COUNTY ATTORNEY SHALL NOTIFY THE BUSINESS ENTITY OF THE  
6 COMPLAINT AND REQUEST THAT THE BUSINESS ENTITY PROVIDE THE  
7 IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN. THE BUSINESS ENTITY  
8 SHALL PROVIDE THE IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN  
9 WITHIN THREE BUSINESS DAYS AFTER RECEIVING THE REQUEST FROM THE  
10 ATTORNEY GENERAL OR COUNTY ATTORNEY.

11 C. AFTER RECEIVING THE IDENTITY OF AN ALLEGED  
12 UNAUTHORIZED ALIEN UNDER SUBSECTION B OF THIS SECTION, THE  
13 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL SUBMIT THE IDENTITY OF  
14 THE ALLEGED UNAUTHORIZED ALIEN FOR VERIFICATION TO THE FEDERAL  
15 GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373. AFTER  
16 RECEIVING THE RESULTS OF THE VERIFICATION FROM THE FEDERAL  
17 GOVERNMENT, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY  
18 THE BUSINESS ENTITY EITHER THAT THE COMPLAINT IS VALID OR THAT  
19 THE COMPLAINT IS DISMISSED. IF THE COMPLAINT IS VALID, THE  
20 BUSINESS ENTITY HAS THREE BUSINESS DAYS TO CORRECT THE VIOLATION  
21 IN THE MANNER PRESCRIBED IN SUBSECTION D OF THIS SECTION. IF  
22 THE BUSINESS ENTITY FAILS TO CORRECT THE VIOLATION, THE ATTORNEY  
23 GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY  
24 TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY AND THE  
25 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE.

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

28 1. TERMINATING THE EMPLOYMENT OF THE UNAUTHORIZED ALIEN.  
29 IF THE TERMINATION IS CHALLENGED IN SUPERIOR COURT, THE REQUIRED  
30 THREE BUSINESS DAYS TO CORRECT THE VIOLATION UNDER SUBSECTION C  
31 OF THIS SECTION SHALL BE TOLLED WHILE THE CHALLENGE IS  
32 ADJUDICATED. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS  
33 PARAGRAPH, THE COURT SHALL EXPEDITE THE ACTION, INCLUDING  
34 ASSIGNING THE HEARING AT THE EARLIEST PRACTICABLE DATE.

35 2. ACQUIRING ADDITIONAL INFORMATION FROM THE EMPLOYEE TO  
36 VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE  
37 BASIC PILOT PROGRAM, AND THE VERIFICATION DETERMINES THAT THE  
38 EMPLOYEE IS AUTHORIZED TO WORK IN THE UNITED STATES. THE  
39 REQUIRED THREE BUSINESS DAYS TO CORRECT THE VIOLATION UNDER  
40 SUBSECTION C OF THIS SECTION SHALL BE TOLLED WHILE THE  
41 VERIFICATION IS CONDUCTED UNDER THIS PARAGRAPH.

42 E. IF THE BUSINESS ENTITY FAILS TO PROVIDE THE IDENTITY  
43 OF THE ALLEGED UNAUTHORIZED ALIEN WITHIN THE REQUIRED THREE  
44 BUSINESS DAYS PURSUANT TO SUBSECTION B OF THIS SECTION, THE  
45 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE

1 AGENCY TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY AND THE  
2 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE. THE  
3 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE  
4 AGENCY AND THE APPROPRIATE AGENCY SHALL REINSTATE A BUSINESS  
5 ENTITY'S SUSPENDED LICENSE UNDER THIS SUBSECTION IF THE BUSINESS  
6 ENTITY FILES A SIGNED AFFIDAVIT WITH THE ATTORNEY GENERAL OR  
7 COUNTY ATTORNEY CONTAINING THE FOLLOWING:

8 1. A DESCRIPTION OF THE BUSINESS ENTITY'S ACTIONS TO  
9 CORRECT THE VIOLATION.

10 2. A LIST OF THE NAMES AND ADDRESSES OF THE UNAUTHORIZED  
11 ALIENS THAT WERE THE BASIS OF THE COMPLAINT.

12 3. AN AFFIRMATION THAT THE BUSINESS ENTITY IS ENROLLED IN  
13 AND IS PARTICIPATING TO THE FULLEST EXTENT IN THE BASIC PILOT  
14 PROGRAM.

15 F. FOR A SECOND VIOLATION UNDER THIS SECTION, THE  
16 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE  
17 AGENCY TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY AND THE  
18 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE. THE  
19 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT NOTIFY THE  
20 APPROPRIATE AGENCY TO REINSTATE THE BUSINESS LICENSE UNTIL THE  
21 BUSINESS ENTITY TAKES CORRECTIVE ACTION PURSUANT TO SUBSECTION D  
22 OF THIS SECTION AND FILES THE SIGNED AFFIDAVIT THAT IS REQUIRED  
23 UNDER SUBSECTION E OF THIS SECTION.

24 G. FOR A THIRD VIOLATION UNDER THIS SECTION, THE ATTORNEY  
25 GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY  
26 TO REVOKE THE LICENSE OF THE BUSINESS ENTITY AND THE APPROPRIATE  
27 AGENCY SHALL PERMANENTLY REVOKE THE LICENSE.

28 H. ON COMPLETION OF THE PROCESSING OF A VALID COMPLAINT  
29 PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL OR COUNTY  
30 ATTORNEY SHALL FORWARD A COPY OF THE COMPLAINT AND ANY  
31 ASSOCIATED DOCUMENTS TO THE UNITED STATES IMMIGRATION AND  
32 CUSTOMS ENFORCEMENT.

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

37 J. ANY BUSINESS ENTITY THAT IS SUBJECT TO ENFORCEMENT  
38 UNDER THIS SECTION MAY CHALLENGE THE ENFORCEMENT IN SUPERIOR  
39 COURT. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE  
40 COURT SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING  
41 AT THE EARLIEST PRACTICABLE DATE. ON DETERMINING WHETHER A  
42 PERSON IS AN UNAUTHORIZED ALIEN, THE COURT SHALL CONSIDER ONLY  
43 THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO 8 UNITED  
44 STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S  
45 DETERMINATION CREATES A REBUTTABLE PRESUMPTION OF THE PERSON'S

1           LAWFUL STATUS. THE COURT MAY TAKE JUDICIAL NOTICE OF THE  
2           FEDERAL GOVERNMENT'S DETERMINATION AND MAY REQUEST THE FEDERAL  
3           GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL VERIFICATION  
4           PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

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

7           26-103. Immigration enforcement fund

8           THE IMMIGRATION ENFORCEMENT FUND IS ESTABLISHED CONSISTING  
9           OF ASSESSMENTS DEPOSITED PURSUANT TO SECTIONS 23-212 AND  
10          41-1080.01. THE DEPARTMENT OF MILITARY AFFAIRS AND EMERGENCY  
11          MANAGEMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND:

12          1. ARE SUBJECT TO LEGISLATIVE APPROPRIATION.

13          2. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190  
14          RELATING TO LAPSING OF APPROPRIATIONS.

15          3. SHALL BE USED TO REIMBURSE AGENCIES AND DEPARTMENTS OF  
16          THIS STATE AND OF POLITICAL SUBDIVISIONS OF THIS STATE FOR COSTS  
17          INCURRED IN ENFORCING IMMIGRATION LAWS.

18          Sec. 4. Section 41-763, Arizona Revised Statutes, is  
19          amended to read:

20          41-763. Powers and duties of the director relating to  
21          personnel

22          The director shall:

23          1. Appoint employees necessary to perform the duties  
24          prescribed by this article.

25          2. Have authority for developing and administering a  
26          program of personnel administration for the state service in  
27          conformance with the personnel rules.

28          3. Have authority to establish such offices as may be  
29          necessary to maintain an effective and economical program of  
30          personnel administration.

31          4. Have the power to deputize employees in various state  
32          agencies where certain of the functions of personnel  
33          administration can be performed by such deputies.

34          5. Make an annual report and recommendation to the  
35          legislature and the joint legislative budget committee as  
36          provided in section 41-763.01.

37          6. Adopt rules relating to personnel and personnel  
38          administration.

39          7. Subject to legislative appropriation, have the  
40          authority to contract for the services of consultants necessary  
41          to perform the annual salary plan and salary plan adjustment  
42          recommendations.

43          8. Establish a mandatory program of annual personnel  
44          management training for all state employees with supervisory or  
45          managerial responsibility that is appropriate to the nature and

1 scope of the employees' supervisory responsibilities. The  
2 director may waive the annual mandatory training on a case by  
3 case basis. The training shall include at least the following  
4 subjects:

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

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

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

23 ARTICLE 7.2. LICENSING ELIGIBILITY

24 41-1080. Definitions

25 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

29 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT  
30 VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED  
31 STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY  
32 ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

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

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

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

43 A. BEFORE RECEIVING A LICENSE OR A RENEWAL OF A LICENSE  
44 FROM AN AGENCY, A BUSINESS ENTITY SHALL FILE A SIGNED SWORN  
45 AFFIDAVIT WITH THE AGENCY THAT STATES THAT THE BUSINESS ENTITY

1 DOES NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN AND THAT THE  
2 BUSINESS ENTITY WILL NOT DIRECT ANY OTHER PERSON TO EMPLOY AN  
3 UNAUTHORIZED ALIEN. AN AGENCY SHALL NOT ISSUE OR RENEW A  
4 LICENSE TO ANY BUSINESS ENTITY THAT FAILS TO SUBMIT THE SIGNED  
5 AFFIDAVIT.

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

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

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

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

29 C. IF THE ATTORNEY GENERAL DETERMINES THAT A BUSINESS  
30 ENTITY HAS FILED A FALSE SWORN AFFIDAVIT UNDER THIS SECTION, THE  
31 ATTORNEY GENERAL SHALL NOTIFY THE COUNTY ATTORNEY TO PROSECUTE  
32 THE BUSINESS ENTITY FOR FILING A FALSE SWORN AFFIDAVIT.

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

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

39 41-2505. Awarded contracts; employee verification;  
40 definition

41 A. A PROCUREMENT OFFICER OF THIS STATE SHALL NOT AWARD A  
42 CONTRACT UNDER THIS CHAPTER THAT EXCEEDS TEN THOUSAND DOLLARS TO  
43 ANY CONTRACTOR OR SUBCONTRACTOR UNLESS THE EMPLOYMENT  
44 ELIGIBILITY OF THE EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR  
45 HAS BEEN VERIFIED BY THE CONTRACTOR OR SUBCONTRACTOR THROUGH THE

1 BASIC PILOT PROGRAM. THE CONTRACTOR OR SUBCONTRACTOR SHALL FILE  
2 A SIGNED AFFIDAVIT WITH THE PROCUREMENT OFFICER THAT STATES THAT  
3 THE CONTRACTOR OR SUBCONTRACTOR IS ENROLLED AND PARTICIPATES IN  
4 THE BASIC PILOT PROGRAM.

5 B. FOR THE PURPOSES OF THIS SECTION, "BASIC PILOT  
6 PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM  
7 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF  
8 HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS  
9 SUCCESSOR PROGRAM.

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

12 43-1021. Additions to Arizona gross income

13 In computing Arizona adjusted gross income, the following  
14 amounts shall be added to Arizona gross income:

15 1. A beneficiary's share of the fiduciary adjustment to  
16 the extent that the amount determined by section 43-1333  
17 increases the beneficiary's Arizona gross income.

18 2. An amount equal to the "ordinary income portion" of a  
19 lump sum distribution that was excluded from federal adjusted  
20 gross income pursuant to section 402(d) of the internal revenue  
21 code.

22 3. The amount of interest income received on obligations  
23 of any state, territory or possession of the United States, or  
24 any political subdivision thereof, located outside the state of  
25 Arizona, reduced, for tax years beginning from and after  
26 December 31, 1996, by the amount of any interest on indebtedness  
27 and other related expenses that were incurred or continued to  
28 purchase or carry those obligations and that are not otherwise  
29 deducted or subtracted in arriving at Arizona gross income.

30 4. Annuity income received during the taxable year to the  
31 extent that the sum of the proceeds received from such annuity  
32 in all taxable years prior to and including the current taxable  
33 year exceeds the total consideration and premiums paid by the  
34 taxpayer. This paragraph applies only to those annuities with  
35 respect to which the first payment was received prior to  
36 December 31, 1978.

37 5. The excess of a partner's share of partnership taxable  
38 income required to be included under chapter 14, article 2 of  
39 this title over the income required to be reported under section  
40 702(a)(8) of the internal revenue code.

41 6. The excess of a partner's share of partnership losses  
42 determined pursuant to section 702(a)(8) of the internal revenue  
43 code over the losses allowable under chapter 14, article 2 of  
44 this title.

1           7. The amount by which the adjusted basis of property  
2 described in this paragraph and computed pursuant to the  
3 internal revenue code exceeds the adjusted basis of such  
4 property computed pursuant to this title and the income tax act  
5 of 1954, as amended. This paragraph shall apply to all property  
6 which is held for the production of income and which is sold or  
7 otherwise disposed of during the taxable year, except  
8 depreciable property used in a trade or business.

9           8. The amount of depreciation or amortization of costs of  
10 any capital investment that is deducted pursuant to section 167  
11 or 179 of the internal revenue code by a qualified defense  
12 contractor with respect to which an election is made to amortize  
13 pursuant to section 43-1024.

14           9. The amount of gain from the sale or other disposition  
15 of a capital investment which a qualified defense contractor has  
16 elected to amortize pursuant to section 43-1024.

17           10. Amounts withdrawn from the Arizona state retirement  
18 system, the corrections officer retirement plan, the public  
19 safety personnel retirement system, the elected officials'  
20 retirement plan or a county or city retirement plan by an  
21 employee upon termination of employment before retirement to the  
22 extent they were deducted in arriving at Arizona taxable income  
23 in any year.

24           11. That portion of the net operating loss included in  
25 federal adjusted gross income which has already been taken as a  
26 net operating loss for Arizona purposes or which is separately  
27 taken as a subtraction under the special net operating loss  
28 transition rule.

29           12. Any nonitemized amount deducted pursuant to section  
30 170 of the internal revenue code representing contributions to  
31 an educational institution which denies admission, enrollment or  
32 board and room accommodations on the basis of race, color or  
33 ethnic background except those institutions primarily  
34 established for the education of American Indians.

35           13. The amount paid as taxes on property in this state  
36 with respect to which a credit is claimed under section 43-1078.

37           14. Amounts withdrawn from a medical savings account by  
38 the individual during the taxable year computed pursuant to  
39 section 220(f) of the internal revenue code and not included in  
40 federal adjusted gross income.

41           15. Any amount of agricultural water conservation expenses  
42 that were deducted pursuant to the internal revenue code for  
43 which a credit is claimed under section 43-1084.

1           16. The amount by which the depreciation or amortization  
2           computed under the internal revenue code with respect to  
3           property for which a credit was taken under section 43-1080  
4           exceeds the amount of depreciation or amortization computed  
5           pursuant to the internal revenue code on the Arizona adjusted  
6           basis of the property.

7           17. The amount by which the adjusted basis computed under  
8           the internal revenue code with respect to property for which a  
9           credit was claimed under section 43-1080 and which is sold or  
10          otherwise disposed of during the taxable year exceeds the  
11          adjusted basis of the property computed under section 43-1080.

12          18. The amount by which the depreciation or amortization  
13          computed under the internal revenue code with respect to  
14          property for which a credit was taken under either section  
15          43-1081 or 43-1081.01 exceeds the amount of depreciation or  
16          amortization computed pursuant to the internal revenue code on  
17          the Arizona adjusted basis of the property.

18          19. The amount by which the adjusted basis computed under  
19          the internal revenue code with respect to property for which a  
20          credit was claimed under section 43-1074.02, 43-1081 or  
21          43-1081.01 and which is sold or otherwise disposed of during the  
22          taxable year exceeds the adjusted basis of the property computed  
23          under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

24          20. The deduction referred to in section 1341(a)(4) of the  
25          internal revenue code for restoration of a substantial amount  
26          held under a claim of right.

27          21. The amount by which a net operating loss carryover or  
28          capital loss carryover allowable pursuant to section 1341(b)(5)  
29          of the internal revenue code exceeds the net operating loss  
30          carryover or capital loss carryover allowable pursuant to  
31          section 43-1029, subsection F.

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

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

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

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

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

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

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

15           29. The amount by which the depreciation or amortization  
16 computed under the internal revenue code with respect to  
17 property for which a credit was taken under section 43-1090.01  
18 exceeds the amount of depreciation or amortization computed  
19 pursuant to the internal revenue code on the Arizona adjusted  
20 basis of the property.

21           30. The amount by which the adjusted basis computed under  
22 the internal revenue code with respect to property for which a  
23 credit was claimed under section 43-1090.01 and which is sold or  
24 otherwise disposed of during the taxable year exceeds the  
25 adjusted basis of the property computed under section  
26 43-1090.01.

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

35           Sec. 8. Severability

36           If any provision of this act or its application to any  
37 person or circumstance is held invalid, the invalidity does not  
38 affect other provisions or applications of this act that can be  
39 given effect without the invalid provision or application, and  
40 to this end the provisions of this act are severable.

41           Sec. 9. Legislative findings

42           The Legislature finds that this act complies with the  
43 requirements of 8 United States Code section 1324(a)(h)(2) by  
44 addressing employer sanctions through licensure and similar  
45 means. Criminal penalties contained in this act are associated

1 exclusively with the state crime of false swearing on  
2 application for a license or on the filing of articles of  
3 incorporation for a business, not the act of employing  
4 unauthorized persons.

5 Sec. 10. Short title

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

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