

COMMITTEE ON MILITARY AFFAIRS AND PUBLIC SAFETY
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1070
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Intent

3 The legislature finds that there is a compelling interest in the
4 cooperative enforcement of federal immigration laws throughout all of
5 Arizona. The legislature declares that the intent of this act is to make
6 attrition through enforcement the public policy of all state and local
7 government agencies in Arizona. The provisions of this act are intended to
8 work together to discourage and deter the unlawful entry and presence of
9 aliens and economic activity by persons unlawfully present in the United
10 States.

11 Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by
12 adding article 8, to read:

13 ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

14 11-1051. Cooperation and assistance in enforcement of
15 immigration laws; indemnification

16 A. NO OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
17 OTHER POLITICAL SUBDIVISION OF THIS STATE MAY LIMIT OR RESTRICT THE
18 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT
19 PERMITTED BY FEDERAL LAW.

20 B. FOR ANY LAWFUL CONTACT MADE BY A LAW ENFORCEMENT OFFICIAL OR AGENCY
21 OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS
22 STATE WHERE REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN WHO IS
23 UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE MADE,
24 WHEN PRACTICABLE, TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON. ANY
25 PERSON WHO IS ARRESTED SHALL HAVE THE PERSON'S IMMIGRATION STATUS DETERMINED
26 BEFORE THE PERSON IS RELEASED. THE PERSON'S IMMIGRATION STATUS SHALL BE
27 VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION
28 1373(c). A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,

1 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT SOLELY
2 CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN IMPLEMENTING THE REQUIREMENTS OF
3 THIS SUBSECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR
4 ARIZONA CONSTITUTION. A PERSON IS PRESUMED TO NOT BE AN ALIEN WHO IS
5 UNLAWFULLY PRESENT IN THE UNITED STATES IF THE PERSON PROVIDES TO THE LAW
6 ENFORCEMENT OFFICER OR AGENCY ANY OF THE FOLLOWING:

- 7 1. A VALID ARIZONA DRIVER LICENSE.
- 8 2. A VALID ARIZONA NONOPERATING IDENTIFICATION LICENSE.
- 9 3. A TRIBAL ENROLLMENT CARD OR OTHER FORM OF TRIBAL IDENTIFICATION.
- 10 4. A VALID UNITED STATES FEDERAL, STATE OR LOCAL GOVERNMENT ISSUED
11 IDENTIFICATION.

12 C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS
13 CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM
14 IMPRISONMENT OR ASSESSMENT OF ANY FINE THAT IS IMPOSED, THE ALIEN SHALL BE
15 TRANSFERRED IMMEDIATELY TO THE CUSTODY OF THE UNITED STATES IMMIGRATION AND
16 CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION.

17 D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY
18 SECURELY TRANSPORT AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES
19 AND WHO IS IN THE AGENCY'S CUSTODY TO A FEDERAL FACILITY IN THIS STATE OR TO
20 ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY THAT IS OUTSIDE THE
21 JURISDICTION OF THE LAW ENFORCEMENT AGENCY.

22 E. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF THIS
23 STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS
24 STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING,
25 RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS,
26 LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH ANY
27 OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL
28 PURPOSES:

- 29 1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR LICENSE
30 PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL SUBDIVISION OF THIS
31 STATE.

1 2. VERIFYING ANY CLAIM OF RESIDENCE OR DOMICILE IF DETERMINATION OF
2 RESIDENCE OR DOMICILE IS REQUIRED UNDER THE LAWS OF THIS STATE OR A JUDICIAL
3 ORDER ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS STATE.

4 3. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
5 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II, CHAPTER
6 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

7 4. PURSUANT TO 8 UNITED STATES CODE SECTION 1373 AND 8 UNITED STATES
8 CODE SECTION 1644.

9 F. A PERSON MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE ANY
10 OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL
11 SUBDIVISION OF THIS STATE THAT ADOPTS OR IMPLEMENTS A POLICY OR PRACTICE THAT
12 LIMITS OR RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN
13 THE FULL EXTENT PERMITTED BY FEDERAL LAW. IF THERE IS A JUDICIAL FINDING
14 THAT AN ENTITY HAS VIOLATED THIS SECTION, THE COURT SHALL ORDER ANY OF THE
15 FOLLOWING:

16 1. THAT THE PERSON WHO BROUGHT THE ACTION RECOVER COURT COSTS AND
17 ATTORNEY FEES.

18 2. THAT THE ENTITY PAY A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND
19 DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH DAY THAT THE POLICY
20 HAS REMAINED IN EFFECT AFTER THE FILING OF AN ACTION PURSUANT TO THIS
21 SUBSECTION.

22 G. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION F
23 AND REMIT THE CIVIL PENALTY TO THE DEPARTMENT OF PUBLIC SAFETY FOR DEPOSIT IN
24 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND
25 ESTABLISHED BY SECTION 41-1724.

26 H. EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS ADJUDGED TO
27 HAVE ACTED IN BAD FAITH, A LAW ENFORCEMENT OFFICER IS INDEMNIFIED BY THE LAW
28 ENFORCEMENT OFFICER'S AGENCY AGAINST REASONABLE COSTS AND EXPENSES, INCLUDING
29 ATTORNEY FEES, INCURRED BY THE OFFICER IN CONNECTION WITH ANY ACTION, SUIT OR
30 PROCEEDING BROUGHT PURSUANT TO THIS SECTION TO WHICH THE OFFICER MAY BE A
31 PARTY BY REASON OF THE OFFICER BEING OR HAVING BEEN A MEMBER OF THE LAW
32 ENFORCEMENT AGENCY.

1 I. THIS SECTION SHALL BE IMPLEMENTED IN A MANNER CONSISTENT WITH
2 FEDERAL LAWS REGULATING IMMIGRATION, PROTECTING THE CIVIL RIGHTS OF ALL
3 PERSONS AND RESPECTING THE PRIVILEGES AND IMMUNITIES OF UNITED STATES
4 CITIZENS.

5 Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended by
6 adding section 13-1509, to read:

7 13-1509. Willful failure to complete or carry an alien
8 registration document; assessment; exception;
9 classification

10 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY OF
11 WILLFUL FAILURE TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT IF THE
12 PERSON IS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR 1306(a).

13 B. IN THE ENFORCEMENT OF THIS SECTION, THE FINAL DETERMINATION OF AN
14 ALIEN'S IMMIGRATION STATUS SHALL BE DETERMINED BY EITHER:

15 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
16 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

17 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED
18 STATES BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

19 C. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE
20 FOR SUSPENSION OR COMMUTATION OF SENTENCE OR RELEASE ON ANY BASIS UNTIL THE
21 SENTENCE IMPOSED IS SERVED.

22 D. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL
23 ORDER THE PERSON TO PAY JAIL COSTS AND AN ADDITIONAL ASSESSMENT IN THE
24 FOLLOWING AMOUNTS:

25 1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.

26 2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION IF THE
27 PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS SUBSECTION.

28 E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D OF
29 THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC SAFETY,
30 WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT
31 ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT
32 MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO

1 LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND IMMIGRATION
2 ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL
3 IMMIGRATION.

4 F. THIS SECTION DOES NOT APPLY TO A PERSON WHO MAINTAINS AUTHORIZATION
5 FROM THE FEDERAL GOVERNMENT TO REMAIN IN THE UNITED STATES.

6 G. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT A
7 VIOLATION OF THIS SECTION IS:

8 1. A CLASS 3 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN
9 POSSESSION OF ANY OF THE FOLLOWING:

10 (a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.

11 (b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF
12 METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.

13 (c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN SECTION
14 13-105.

15 (d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF
16 TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.

17 2. A CLASS 4 FELONY IF THE PERSON EITHER:

18 (a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION.

19 (b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM
20 THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS
21 ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED
22 STATES CODE SECTION 1229c.

23 Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to read:

24 13-2319. Smuggling; classification; definitions

25 A. It is unlawful for a person to intentionally engage in the
26 smuggling of human beings for profit or commercial purpose.

27 B. A violation of this section is a class 4 felony.

28 C. Notwithstanding subsection B of this section, a violation of this
29 section:

30 1. Is a class 2 felony if the human being who is smuggled is under
31 eighteen years of age and is not accompanied by a family member over eighteen

1 years of age or the offense involved the use of a deadly weapon or dangerous
2 instrument.

3 2. Is a class 3 felony if the offense involves the use or threatened
4 use of deadly physical force and the person is not eligible for suspension of
5 sentence, probation, pardon or release from confinement on any other basis
6 except pursuant to section 31-233, subsection A or B until the sentence
7 imposed by the court is served, the person is eligible for release pursuant
8 to section 41-1604.07 or the sentence is commuted.

9 D. Chapter 10 of this title does not apply to a violation of
10 subsection C, paragraph 1 of this section.

11 E. NOTWITHSTANDING ANY OTHER LAW, A PEACE OFFICER MAY LAWFULLY STOP
12 ANY PERSON WHO IS OPERATING A MOTOR VEHICLE IF THE OFFICER HAS REASONABLE
13 SUSPICION TO BELIEVE THE PERSON IS IN VIOLATION OF ANY CIVIL TRAFFIC LAW AND
14 THIS SECTION.

15 ~~E.~~ F. For the purposes of this section:

16 1. "Family member" means the person's parent, grandparent, sibling or
17 any other person who is related to the person by consanguinity or affinity to
18 the second degree.

19 2. "Procurement of transportation" means any participation in or
20 facilitation of transportation and includes:

21 (a) Providing services that facilitate transportation including travel
22 arrangement services or money transmission services.

23 (b) Providing property that facilitates transportation, including a
24 weapon, a vehicle or other means of transportation or false identification,
25 or selling, leasing, renting or otherwise making available a drop house as
26 defined in section 13-2322.

27 3. "Smuggling of human beings" means the transportation, procurement
28 of transportation or use of property or real property by a person or an
29 entity that knows or has reason to know that the person or persons
30 transported or to be transported are not United States citizens, permanent
31 resident aliens or persons otherwise lawfully in this state or have attempted
32 to enter, entered or remained in the United States in violation of law.

1 Sec. 5. Title 13, chapter 29, Arizona Revised Statutes, is amended by
2 adding sections 13-2928 and 13-2929, to read:

3 13-2928. Unlawful stopping to hire and pick up passengers for
4 work; unlawful application, solicitation or
5 employment; classification; definitions

6 A. IT IS UNLAWFUL FOR AN OCCUPANT OF A MOTOR VEHICLE THAT IS STOPPED
7 ON A STREET, ROADWAY OR HIGHWAY TO ATTEMPT TO HIRE OR HIRE AND PICK UP
8 PASSENGERS FOR WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR
9 IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

10 B. IT IS UNLAWFUL FOR A PERSON TO ENTER A MOTOR VEHICLE THAT IS
11 STOPPED ON A STREET, ROADWAY OR HIGHWAY IN ORDER TO BE HIRED BY AN OCCUPANT
12 OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK AT A DIFFERENT LOCATION IF
13 THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

14 C. IT IS UNLAWFUL FOR A PERSON WHO IS UNLAWFULLY PRESENT IN THE UNITED
15 STATES AND WHO IS AN UNAUTHORIZED ALIEN TO KNOWINGLY APPLY FOR WORK, SOLICIT
16 WORK IN A PUBLIC PLACE OR PERFORM WORK AS AN EMPLOYEE OR INDEPENDENT
17 CONTRACTOR IN THIS STATE.

18 D. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

19 E. FOR THE PURPOSES OF THIS SECTION:

20 1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE OR A
21 NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS WILLING TO BE
22 EMPLOYED.

23 2. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL
24 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS
25 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

26 13-2929. Unlawful transporting, moving, concealing, harboring
27 or shielding of unlawful aliens; vehicle
28 impoundment; defense; classification

29 A. IT IS UNLAWFUL FOR A PERSON TO:

30 1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN THIS
31 STATE, IN FURTHERANCE OF THE ILLEGAL PRESENCE OF THE ALIEN IN THE UNITED
32 STATES, IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR RECKLESSLY

1 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE
2 UNITED STATES IN VIOLATION OF LAW.

3 2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR SHIELD
4 AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY BUILDING OR
5 ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE
6 FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES
7 IN VIOLATION OF LAW.

8 3. ENCOURAGE OR INDUCE AN ALIEN TO COME TO OR RESIDE IN THIS STATE IF
9 THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT SUCH COMING TO,
10 ENTERING OR RESIDING IN THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

11 B. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A
12 VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR
13 IMPOUNDMENT PURSUANT TO SECTION 28-3511.

14 C. IT IS A DEFENSE TO A PROSECUTION FOR A VIOLATION OF THIS SECTION
15 THAT THE PERSON WAS PROVIDING OR ASSISTED IN PROVIDING EMERGENCY, PUBLIC
16 SAFETY OR PUBLIC HEALTH SERVICES OTHERWISE AVAILABLE TO THE GENERAL PUBLIC
17 WITHOUT REGARD TO INCOME.

18 D. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
19 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS, EXCEPT
20 THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL ALIENS IS
21 A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND
22 DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

23 Sec. 6. Section 13-3883, Arizona Revised Statutes, is amended to read:

24 13-3883. Arrest by officer without warrant

25 A. A peace officer ~~may~~, without a warrant, MAY arrest a person if ~~he~~
26 THE OFFICER has probable cause to believe:

27 1. A felony has been committed and probable cause to believe the
28 person to be arrested has committed the felony.

29 2. A misdemeanor has been committed in ~~his~~ THE OFFICER'S presence and
30 probable cause to believe the person to be arrested has committed the
31 offense.

1 3. The person to be arrested has been involved in a traffic accident
2 and violated any criminal section of title 28, and that such violation
3 occurred prior to or immediately following such traffic accident.

4 4. A misdemeanor or a petty offense has been committed and probable
5 cause to believe the person to be arrested has committed the offense. A
6 person arrested under this paragraph is eligible for release under section
7 13-3903.

8 5. THE PERSON TO BE ARRESTED HAS COMMITTED ANY PUBLIC OFFENSE THAT
9 MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

10 B. A peace officer may stop and detain a person as is reasonably
11 necessary to investigate an actual or suspected violation of any traffic law
12 committed in the officer's presence and may serve a copy of the traffic
13 complaint for any alleged civil or criminal traffic violation. A peace
14 officer who serves a copy of the traffic complaint shall do so within a
15 reasonable time of the alleged criminal or civil traffic violation.

16 Sec. 7. Section 23-212, Arizona Revised Statutes, is amended to read:

17 23-212. Knowingly employing unauthorized aliens; prohibition;
18 false and frivolous complaints; violation;
19 classification; license suspension and revocation;
20 affirmative defense

21 A. An employer shall not knowingly employ an unauthorized alien. If,
22 in the case when an employer uses a contract, subcontract or other
23 independent contractor agreement to obtain the labor of an alien in this
24 state, the employer knowingly contracts with an unauthorized alien or with a
25 person who employs or contracts with an unauthorized alien to perform the
26 labor, the employer violates this subsection.

27 B. The attorney general shall prescribe a complaint form for a person
28 to allege a violation of subsection A of this section. The complainant shall
29 not be required to list the complainant's social security number on the
30 complaint form or to have the complaint form notarized. On receipt of a
31 complaint on a prescribed complaint form that an employer allegedly knowingly
32 employs an unauthorized alien, the attorney general or county attorney shall

1 investigate whether the employer has violated subsection A of this section.
2 If a complaint is received but is not submitted on a prescribed complaint
3 form, the attorney general or county attorney may investigate whether the
4 employer has violated subsection A of this section. This subsection shall
5 not be construed to prohibit the filing of anonymous complaints that are not
6 submitted on a prescribed complaint form. The attorney general or county
7 attorney shall not investigate complaints that are based solely on race,
8 color or national origin. A complaint that is submitted to a county attorney
9 shall be submitted to the county attorney in the county in which the alleged
10 unauthorized alien is or was employed by the employer. The county sheriff or
11 any other local law enforcement agency may assist in investigating a
12 complaint. When investigating a complaint, the attorney general or county
13 attorney shall verify the work authorization of the alleged unauthorized
14 alien with the federal government pursuant to 8 United States Code section
15 1373(c). A state, county or local official shall not attempt to
16 independently make a final determination on whether an alien is authorized to
17 work in the United States. An alien's immigration status or work
18 authorization status shall be verified with the federal government pursuant
19 to 8 United States Code section 1373(c). A person who knowingly files a
20 false and frivolous complaint under this subsection is guilty of a class 3
21 misdemeanor.

22 C. If, after an investigation, the attorney general or county attorney
23 determines that the complaint is not false and frivolous:

24 1. The attorney general or county attorney shall notify the United
25 States immigration and customs enforcement of the unauthorized alien.

26 2. The attorney general or county attorney shall notify the local law
27 enforcement agency of the unauthorized alien.

28 3. The attorney general shall notify the appropriate county attorney
29 to bring an action pursuant to subsection D of this section if the complaint
30 was originally filed with the attorney general.

1 D. An action for a violation of subsection A of this section shall be
2 brought against the employer by the county attorney in the county where the
3 unauthorized alien employee is or was employed by the employer. The county
4 attorney shall not bring an action against any employer for any violation of
5 subsection A of this section that occurs before January 1, 2008. A second
6 violation of this section shall be based only on an unauthorized alien who is
7 or was employed by the employer after an action has been brought for a
8 violation of subsection A of this section or section 23-212.01, subsection A.

9 E. For any action in superior court under this section, the court
10 shall expedite the action, including assigning the hearing at the earliest
11 practicable date.

12 F. On a finding of a violation of subsection A of this section:

13 1. For a first violation, as described in paragraph 3 of this
14 subsection, the court:

15 (a) Shall order the employer to terminate the employment of all
16 unauthorized aliens.

17 (b) Shall order the employer to be subject to a three year
18 probationary period for the business location where the unauthorized alien
19 performed work. During the probationary period the employer shall file
20 quarterly reports in the form provided in section 23-722.01 with the county
21 attorney of each new employee who is hired by the employer at the business
22 location where the unauthorized alien performed work.

23 (c) Shall order the employer to file a signed sworn affidavit with the
24 county attorney within three business days after the order is issued. The
25 affidavit shall state that the employer has terminated the employment of all
26 unauthorized aliens in this state and that the employer will not
27 intentionally or knowingly employ an unauthorized alien in this state. The
28 court shall order the appropriate agencies to suspend all licenses subject to
29 this subdivision that are held by the employer if the employer fails to file
30 a signed sworn affidavit with the county attorney within three business days
31 after the order is issued. All licenses that are suspended under this
32 subdivision shall remain suspended until the employer files a signed sworn

1 affidavit with the county attorney. Notwithstanding any other law, on filing
2 of the affidavit the suspended licenses shall be reinstated immediately by
3 the appropriate agencies. For the purposes of this subdivision, the licenses
4 that are subject to suspension under this subdivision are all licenses that
5 are held by the employer specific to the business location where the
6 unauthorized alien performed work. If the employer does not hold a license
7 specific to the business location where the unauthorized alien performed
8 work, but a license is necessary to operate the employer's business in
9 general, the licenses that are subject to suspension under this subdivision
10 are all licenses that are held by the employer at the employer's primary
11 place of business. On receipt of the court's order and notwithstanding any
12 other law, the appropriate agencies shall suspend the licenses according to
13 the court's order. The court shall send a copy of the court's order to the
14 attorney general and the attorney general shall maintain the copy pursuant to
15 subsection G of this section.

16 (d) May order the appropriate agencies to suspend all licenses
17 described in subdivision (c) of this paragraph that are held by the employer
18 for not to exceed ten business days. The court shall base its decision to
19 suspend under this subdivision on any evidence or information submitted to it
20 during the action for a violation of this subsection and shall consider the
21 following factors, if relevant:

- 22 (i) The number of unauthorized aliens employed by the employer.
- 23 (ii) Any prior misconduct by the employer.
- 24 (iii) The degree of harm resulting from the violation.
- 25 (iv) Whether the employer made good faith efforts to comply with any
26 applicable requirements.
- 27 (v) The duration of the violation.
- 28 (vi) The role of the directors, officers or principals of the employer
29 in the violation.
- 30 (vii) Any other factors the court deems appropriate.

31 2. For a second violation, as described in paragraph 3 of this
32 subsection, the court shall order the appropriate agencies to permanently

1 revoke all licenses that are held by the employer specific to the business
2 location where the unauthorized alien performed work. If the employer does
3 not hold a license specific to the business location where the unauthorized
4 alien performed work, but a license is necessary to operate the employer's
5 business in general, the court shall order the appropriate agencies to
6 permanently revoke all licenses that are held by the employer at the
7 employer's primary place of business. On receipt of the order and
8 notwithstanding any other law, the appropriate agencies shall immediately
9 revoke the licenses.

10 3. The violation shall be considered:

11 (a) A first violation by an employer at a business location if the
12 violation did not occur during a probationary period ordered by the court
13 under this subsection or section 23-212.01, subsection F for that employer's
14 business location.

15 (b) A second violation by an employer at a business location if the
16 violation occurred during a probationary period ordered by the court under
17 this subsection or section 23-212.01, subsection F for that employer's
18 business location.

19 G. The attorney general shall maintain copies of court orders that are
20 received pursuant to subsection F of this section and shall maintain a
21 database of the employers and business locations that have a first violation
22 of subsection A of this section and make the court orders available on the
23 attorney general's website.

24 H. On determining whether an employee is an unauthorized alien, the
25 court shall consider only the federal government's determination pursuant to
26 8 United States Code section 1373(c). The federal government's determination
27 creates a rebuttable presumption of the employee's lawful status. The court
28 may take judicial notice of the federal government's determination and may
29 request the federal government to provide automated or testimonial
30 verification pursuant to 8 United States Code section 1373(c).

1 I. For the purposes of this section, proof of verifying the employment
2 authorization of an employee through the e-verify program creates a
3 rebuttable presumption that an employer did not knowingly employ an
4 unauthorized alien.

5 J. For the purposes of this section, an employer that establishes that
6 it has complied in good faith with the requirements of 8 United States Code
7 section 1324a(b) establishes an affirmative defense that the employer did not
8 knowingly employ an unauthorized alien. An employer is considered to have
9 complied with the requirements of 8 United States Code section 1324a(b),
10 notwithstanding an isolated, sporadic or accidental technical or procedural
11 failure to meet the requirements, if there is a good faith attempt to comply
12 with the requirements.

13 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS
14 SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER
15 MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL
16 ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS
17 THE BURDEN OF PROVING THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

18 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT
19 OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

20 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
21 EMPLOYER TO COMMIT THE VIOLATION.

22 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE
23 LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO
24 COMMIT THE VIOLATION.

25 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
26 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT
27 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
28 COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR
29 THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT
30 OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING
31 IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

1 Sec. 8. Section 23-212.01, Arizona Revised Statutes, is amended to
2 read:

3 23-212.01. Intentionally employing unauthorized aliens;
4 prohibition; false and frivolous complaints;
5 violation; classification; license suspension and
6 revocation; affirmative defense

7 A. An employer shall not intentionally employ an unauthorized alien.
8 If, in the case when an employer uses a contract, subcontract or other
9 independent contractor agreement to obtain the labor of an alien in this
10 state, the employer intentionally contracts with an unauthorized alien or
11 with a person who employs or contracts with an unauthorized alien to perform
12 the labor, the employer violates this subsection.

13 B. The attorney general shall prescribe a complaint form for a person
14 to allege a violation of subsection A of this section. The complainant shall
15 not be required to list the complainant's social security number on the
16 complaint form or to have the complaint form notarized. On receipt of a
17 complaint on a prescribed complaint form that an employer allegedly
18 intentionally employs an unauthorized alien, the attorney general or county
19 attorney shall investigate whether the employer has violated subsection A of
20 this section. If a complaint is received but is not submitted on a
21 prescribed complaint form, the attorney general or county attorney may
22 investigate whether the employer has violated subsection A of this section.
23 This subsection shall not be construed to prohibit the filing of anonymous
24 complaints that are not submitted on a prescribed complaint form. The
25 attorney general or county attorney shall not investigate complaints that are
26 based solely on race, color or national origin. A complaint that is
27 submitted to a county attorney shall be submitted to the county attorney in
28 the county in which the alleged unauthorized alien is or was employed by the
29 employer. The county sheriff or any other local law enforcement agency may
30 assist in investigating a complaint. When investigating a complaint, the
31 attorney general or county attorney shall verify the work authorization of
32 the alleged unauthorized alien with the federal government pursuant to

1 8 United States Code section 1373(c). A state, county or local official
2 shall not attempt to independently make a final determination on whether an
3 alien is authorized to work in the United States. An alien's immigration
4 status or work authorization status shall be verified with the federal
5 government pursuant to 8 United States Code section 1373(c). A person who
6 knowingly files a false and frivolous complaint under this subsection is
7 guilty of a class 3 misdemeanor.

8 C. If, after an investigation, the attorney general or county attorney
9 determines that the complaint is not false and frivolous:

10 1. The attorney general or county attorney shall notify the United
11 States immigration and customs enforcement of the unauthorized alien.

12 2. The attorney general or county attorney shall notify the local law
13 enforcement agency of the unauthorized alien.

14 3. The attorney general shall notify the appropriate county attorney
15 to bring an action pursuant to subsection D of this section if the complaint
16 was originally filed with the attorney general.

17 D. An action for a violation of subsection A of this section shall be
18 brought against the employer by the county attorney in the county where the
19 unauthorized alien employee is or was employed by the employer. The county
20 attorney shall not bring an action against any employer for any violation of
21 subsection A of this section that occurs before January 1, 2008. A second
22 violation of this section shall be based only on an unauthorized alien who is
23 or was employed by the employer after an action has been brought for a
24 violation of subsection A of this section or section 23-212, subsection A.

25 E. For any action in superior court under this section, the court
26 shall expedite the action, including assigning the hearing at the earliest
27 practicable date.

28 F. On a finding of a violation of subsection A of this section:

29 1. For a first violation, as described in paragraph 3 of this
30 subsection, the court shall:

31 (a) Order the employer to terminate the employment of all unauthorized
32 aliens.

1 (b) Order the employer to be subject to a five year probationary
2 period for the business location where the unauthorized alien performed work.
3 During the probationary period the employer shall file quarterly reports in
4 the form provided in section 23-722.01 with the county attorney of each new
5 employee who is hired by the employer at the business location where the
6 unauthorized alien performed work.

7 (c) Order the appropriate agencies to suspend all licenses described
8 in subdivision (d) of this paragraph that are held by the employer for a
9 minimum of ten days. The court shall base its decision on the length of the
10 suspension under this subdivision on any evidence or information submitted to
11 it during the action for a violation of this subsection and shall consider
12 the following factors, if relevant:

13 (i) The number of unauthorized aliens employed by the employer.

14 (ii) Any prior misconduct by the employer.

15 (iii) The degree of harm resulting from the violation.

16 (iv) Whether the employer made good faith efforts to comply with any
17 applicable requirements.

18 (v) The duration of the violation.

19 (vi) The role of the directors, officers or principals of the employer
20 in the violation.

21 (vii) Any other factors the court deems appropriate.

22 (d) Order the employer to file a signed sworn affidavit with the
23 county attorney. The affidavit shall state that the employer has terminated
24 the employment of all unauthorized aliens in this state and that the employer
25 will not intentionally or knowingly employ an unauthorized alien in this
26 state. The court shall order the appropriate agencies to suspend all
27 licenses subject to this subdivision that are held by the employer if the
28 employer fails to file a signed sworn affidavit with the county attorney
29 within three business days after the order is issued. All licenses that are
30 suspended under this subdivision for failing to file a signed sworn affidavit
31 shall remain suspended until the employer files a signed sworn affidavit with
32 the county attorney. For the purposes of this subdivision, the licenses that

1 are subject to suspension under this subdivision are all licenses that are
2 held by the employer specific to the business location where the unauthorized
3 alien performed work. If the employer does not hold a license specific to
4 the business location where the unauthorized alien performed work, but a
5 license is necessary to operate the employer's business in general, the
6 licenses that are subject to suspension under this subdivision are all
7 licenses that are held by the employer at the employer's primary place of
8 business. On receipt of the court's order and notwithstanding any other law,
9 the appropriate agencies shall suspend the licenses according to the court's
10 order. The court shall send a copy of the court's order to the attorney
11 general and the attorney general shall maintain the copy pursuant to
12 subsection G of this section.

13 2. For a second violation, as described in paragraph 3 of this
14 subsection, the court shall order the appropriate agencies to permanently
15 revoke all licenses that are held by the employer specific to the business
16 location where the unauthorized alien performed work. If the employer does
17 not hold a license specific to the business location where the unauthorized
18 alien performed work, but a license is necessary to operate the employer's
19 business in general, the court shall order the appropriate agencies to
20 permanently revoke all licenses that are held by the employer at the
21 employer's primary place of business. On receipt of the order and
22 notwithstanding any other law, the appropriate agencies shall immediately
23 revoke the licenses.

24 3. The violation shall be considered:

25 (a) A first violation by an employer at a business location if the
26 violation did not occur during a probationary period ordered by the court
27 under this subsection or section 23-212, subsection F for that employer's
28 business location.

29 (b) A second violation by an employer at a business location if the
30 violation occurred during a probationary period ordered by the court under
31 this subsection or section 23-212, subsection F for that employer's business
32 location.

1 G. The attorney general shall maintain copies of court orders that are
2 received pursuant to subsection F of this section and shall maintain a
3 database of the employers and business locations that have a first violation
4 of subsection A of this section and make the court orders available on the
5 attorney general's website.

6 H. On determining whether an employee is an unauthorized alien, the
7 court shall consider only the federal government's determination pursuant to
8 8 United States Code section 1373(c). The federal government's determination
9 creates a rebuttable presumption of the employee's lawful status. The court
10 may take judicial notice of the federal government's determination and may
11 request the federal government to provide automated or testimonial
12 verification pursuant to 8 United States Code section 1373(c).

13 I. For the purposes of this section, proof of verifying the employment
14 authorization of an employee through the e-verify program creates a
15 rebuttable presumption that an employer did not intentionally employ an
16 unauthorized alien.

17 J. For the purposes of this section, an employer that establishes that
18 it has complied in good faith with the requirements of 8 United States Code
19 section 1324a(b) establishes an affirmative defense that the employer did not
20 intentionally employ an unauthorized alien. An employer is considered to
21 have complied with the requirements of 8 United States Code section 1324a(b),
22 notwithstanding an isolated, sporadic or accidental technical or procedural
23 failure to meet the requirements, if there is a good faith attempt to comply
24 with the requirements.

25 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS
26 SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER
27 MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL
28 ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS
29 THE BURDEN OF PROVING THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

30 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT
31 OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

1 government entity within thirty days of the final determination. For the
2 purposes of this subsection:

3 1. "Economic development incentive" means any grant, loan or
4 performance-based incentive from any government entity that is awarded after
5 September 30, 2008. Economic development incentive does not include any tax
6 provision under title 42 or 43.

7 2. "Government entity" means this state and any political subdivision
8 of this state that receives and uses tax revenues.

9 C. Every three months the attorney general shall request from the
10 United States department of homeland security a list of employers from this
11 state that are registered with the e-verify program. On receipt of the list
12 of employers, the attorney general shall make the list available on the
13 attorney general's website.

14 Sec. 10. Section 28-3511, Arizona Revised Statutes, is amended to
15 read:

16 28-3511. Removal and immobilization or impoundment of vehicle

17 A. A peace officer shall cause the removal and either immobilization
18 or impoundment of a vehicle if the peace officer determines that a person is
19 driving the vehicle while any of the following applies:

20 1. The person's driving privilege is suspended or revoked for any
21 reason.

22 2. The person has not ever been issued a valid driver license or
23 permit by this state and the person does not produce evidence of ever having
24 a valid driver license or permit issued by another jurisdiction. This
25 paragraph does not apply to the operation of an implement of husbandry.

26 3. The person is subject to an ignition interlock device requirement
27 pursuant to chapter 4 of this title and the person is operating a vehicle
28 without a functioning certified ignition interlock device. This paragraph
29 does not apply to a person operating an employer's vehicle or the operation
30 of a vehicle due to a substantial emergency as defined in section 28-1464.

31 4. IN FURTHERANCE OF THE ILLEGAL PRESENCE OF AN ALIEN IN THE UNITED
32 STATES, THE PERSON IS TRANSPORTING OR MOVING OR ATTEMPTING TO TRANSPORT OR

1 MOVE AN ALIEN IN THIS STATE IN A VEHICLE IF THE PERSON KNOWS OR RECKLESSLY
2 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE
3 UNITED STATES IN VIOLATION OF LAW.

4 5. THE PERSON IS CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING TO
5 CONCEAL, HARBOR OR SHIELD FROM DETECTION AN ALIEN IN THIS STATE IN A VEHICLE
6 IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME
7 TO, ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

8 B. A peace officer shall cause the removal and impoundment of a
9 vehicle if the peace officer determines that a person is driving the vehicle
10 and if all of the following apply:

11 1. The person's driving privilege is canceled, suspended or revoked
12 for any reason or the person has not ever been issued a driver license or
13 permit by this state and the person does not produce evidence of ever having
14 a driver license or permit issued by another jurisdiction.

15 2. The person is not in compliance with the financial responsibility
16 requirements of chapter 9, article 4 of this title.

17 3. The person is driving a vehicle that is involved in an accident
18 that results in either property damage or injury to or death of another
19 person.

20 C. Except as provided in subsection D of this section, while a peace
21 officer has control of the vehicle the peace officer shall cause the removal
22 and either immobilization or impoundment of the vehicle if the peace officer
23 has probable cause to arrest the driver of the vehicle for a violation of
24 section 4-244, paragraph 34 or section 28-1382 or 28-1383.

25 D. A peace officer shall not cause the removal and either the
26 immobilization or impoundment of a vehicle pursuant to subsection C of this
27 section if all of the following apply:

28 1. The peace officer determines that the vehicle is currently
29 registered and that the driver or the vehicle is in compliance with the
30 financial responsibility requirements of chapter 9, article 4 of this title.

31 2. The spouse of the driver is with the driver at the time of the
32 arrest.

1 BE USED FOR GANG AND IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL
2 REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

3 Sec. 12. Severability, implementation and construction

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

9 B. The terms of this act regarding immigration shall be construed to
10 have the meanings given to them under federal immigration law.

11 C. This act shall be implemented in a manner consistent with federal
12 laws regulating immigration, protecting the civil rights of all persons and
13 respecting the privileges and immunities of United States citizens.

14 D. Nothing in this act shall implement or shall be construed or
15 interpreted to implement or establish the REAL ID act of 2005 (P.L. 109-13,
16 division B; 119 Stat. 302) including the use of a radio frequency
17 identification chip.

18 Sec. 13. Short title

19 This act may be cited as the "Support Our Law Enforcement and Safe
20 Neighborhoods Act".

21 Amend title to conform

and, as so amended, it do pass

DAVID M. GOWAN, SR.
Vice-Chairman

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H:jmb

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