

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2632

(Reference to printed 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 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 ADOPT A POLICY THAT LIMITS OR
18 RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL
19 EXTENT PERMITTED BY FEDERAL LAW.

20 B. FOR ANY LEGITIMATE CONTACT MADE BY AN OFFICIAL OR AGENCY OF THIS
21 STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE
22 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 TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON. THE PERSON'S IMMIGRATION
25 STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED
26 STATES CODE SECTION 1373(c).

27 C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS
28 CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM
29 IMPRISONMENT OR ASSESSMENT OF ANY FINE THAT IS IMPOSED, THE ALIEN SHALL BE

1 TRANSFERRED IMMEDIATELY TO THE CUSTODY OF THE UNITED STATES IMMIGRATION
2 AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION.

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

8 E. A LAW ENFORCEMENT OFFICER, WITHOUT A WARRANT, MAY ARREST A PERSON
9 IF THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS COMMITTED
10 ANY PUBLIC OFFENSE THAT MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

11 F. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF THIS
12 STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS
13 STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING,
14 RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS OF
15 ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH ANY OTHER FEDERAL, STATE
16 OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL PURPOSES:

17 1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR LICENSE
18 PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL SUBDIVISION OF THIS
19 STATE.

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

23 3. CONFIRMING THE IDENTITY OF ANY PERSON WHO IS DETAINED.

24 4. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
25 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II, CHAPTER
26 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

27 G. A PERSON MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE ANY
28 OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL
29 SUBDIVISION OF THIS STATE THAT ADOPTS OR IMPLEMENTS A POLICY THAT LIMITS OR
30 RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL
31 EXTENT PERMITTED BY FEDERAL LAW. IF THERE IS A JUDICIAL FINDING THAT AN
32 ENTITY HAS VIOLATED THIS SECTION, THE COURT SHALL ORDER ANY OF THE FOLLOWING:

1 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED TO VERIFY OR ASCERTAIN
2 AN ALIEN'S IMMIGRATION STATUS.

3 2. A LAW ENFORCEMENT OFFICER OR AGENCY COMMUNICATING WITH THE UNITED
4 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES BORDER
5 PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

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

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

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

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

15 E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D OF
16 THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC SAFETY,
17 WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT
18 ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT
19 MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO
20 LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND IMMIGRATION
21 ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL
22 IMMIGRATION.

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

25 G. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT A
26 VIOLATION OF THIS SECTION IS:

27 1. A CLASS 2 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN
28 POSSESSION OF ANY OF THE FOLLOWING:

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

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

1 (c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN SECTION
2 13-105.

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

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

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

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

11 Sec. 4. Title 13, chapter 29, Arizona Revised Statutes, is amended by
12 adding sections 13-2928 and 13-2929, to read:

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

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

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

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

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

29 E. FOR THE PURPOSES OF THIS SECTION:
30

1 Sec. 5. Section 23-212, Arizona Revised Statutes, is amended to read:

2 23-212. Knowingly employing unauthorized aliens; prohibition;
3 false and frivolous complaints; violation;
4 classification; license suspension and revocation;
5 affirmative defense

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

12 B. The attorney general shall prescribe a complaint form for a person
13 to allege a violation of subsection A of this section. The complainant shall
14 not be required to list the complainant's social security number on the
15 complaint form or to have the complaint form notarized. On receipt of a
16 complaint on a prescribed complaint form that an employer allegedly knowingly
17 employs an unauthorized alien, the attorney general or county attorney shall
18 investigate whether the employer has violated subsection A of this section.
19 If a complaint is received but is not submitted on a prescribed complaint
20 form, the attorney general or county attorney may investigate whether the
21 employer has violated subsection A of this section. This subsection shall
22 not be construed to prohibit the filing of anonymous complaints that are not
23 submitted on a prescribed complaint form. The attorney general or county
24 attorney shall not investigate complaints that are based solely on race,
25 color or national origin. A complaint that is submitted to a county attorney
26 shall be submitted to the county attorney in the county in which the alleged
27 unauthorized alien is or was employed by the employer. The county sheriff or
28 any other local law enforcement agency may assist in investigating a
29 complaint. **THE COUNTY ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR**
30 **AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES**
31 **AND CAUSE DEPOSITIONS TO BE TAKEN.** When investigating a complaint, the
32 attorney general or county attorney shall verify the work authorization of

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

9 C. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION
10 ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1.

11 ~~C.~~ D. If, after an investigation, the attorney general or county
12 attorney determines that the complaint is not false and frivolous:

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

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

17 3. The attorney general shall notify the appropriate county attorney
18 to bring an action pursuant to subsection ~~D~~ E of this section if the
19 complaint was originally filed with the attorney general.

20 ~~D.~~ E. An action for a violation of subsection A of this section shall
21 be brought against the employer by the county attorney in the county where
22 the unauthorized alien employee is or was employed by the employer. The
23 county attorney shall not bring an action against any employer for any
24 violation of subsection A of this section that occurs before January 1, 2008.
25 A second violation of this section shall be based only on an unauthorized
26 alien who is or was employed by the employer after an action has been brought
27 for a violation of subsection A of this section or section 23-212.01,
28 subsection A.
29

1 ~~F.~~ F. For any action in superior court under this section, the court
2 shall expedite the action, including assigning the hearing at the earliest
3 practicable date.

4 ~~F.~~ G. On a finding of a violation of subsection A of this section:

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

7 (a) Shall order the employer to terminate the employment of all
8 unauthorized aliens.

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

15 (c) Shall order the employer to file a signed sworn affidavit with the
16 county attorney within three business days after the order is issued. The
17 affidavit shall state that the employer has terminated the employment of all
18 unauthorized aliens in this state and that the employer will not
19 intentionally or knowingly employ an unauthorized alien in this state. The
20 court shall order the appropriate agencies to suspend all licenses subject to
21 this subdivision that are held by the employer if the employer fails to file
22 a signed sworn affidavit with the county attorney within three business days
23 after the order is issued. All licenses that are suspended under this
24 subdivision shall remain suspended until the employer files a signed sworn
25 affidavit with the county attorney. Notwithstanding any other law, on filing
26 of the affidavit the suspended licenses shall be reinstated immediately by
27 the appropriate agencies. For the purposes of this subdivision, the licenses
28 that are subject to suspension under this subdivision are all licenses that
29 are held by the employer specific to the business location where the
30 unauthorized alien performed work. If the employer does not hold a license
31 specific to the business location where the unauthorized alien performed
32 work, but a license is necessary to operate the employer's business in

1 general, the licenses that are subject to suspension under this subdivision
2 are all licenses that are held by the employer at the employer's primary
3 place of business. On receipt of the court's order and notwithstanding any
4 other law, the appropriate agencies shall suspend the licenses according to
5 the court's order. The court shall send a copy of the court's order to the
6 attorney general and the attorney general shall maintain the copy pursuant to
7 subsection ~~G~~ H of this section.

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

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

15 (ii) Any prior misconduct by the employer.

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

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

19 (v) The duration of the violation.

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

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

23 2. For a second violation, as described in paragraph 3 of this
24 subsection, the court shall order the appropriate agencies to permanently
25 revoke all licenses that are held by the employer specific to the business
26 location where the unauthorized alien performed work. If the employer does
27 not hold a license specific to the business location where the unauthorized
28 alien performed work, but a license is necessary to operate the employer's
29 business in general, the court shall order the appropriate agencies to
30 permanently revoke all licenses that are held by the employer at the
31 employer's primary place of business. On receipt of the order and

1 notwithstanding any other law, the appropriate agencies shall immediately
2 revoke the licenses.

3 3. The violation shall be considered:

4 (a) A first violation by an employer at a business location if the
5 violation did not occur during a probationary period ordered by the court
6 under this subsection or section 23-212.01, subsection ~~F~~ G for that
7 employer's business location.

8 (b) A second violation by an employer at a business location if the
9 violation occurred during a probationary period ordered by the court under
10 this subsection or section 23-212.01, subsection ~~F~~ G for that employer's
11 business location.

12 ~~G~~. H. The attorney general shall maintain copies of court orders that
13 are received pursuant to subsection ~~F~~ G of this section and shall maintain a
14 database of the employers and business locations that have a first violation
15 of subsection A of this section and make the court orders available on the
16 attorney general's website.

17 ~~H~~. I. On determining whether an employee is an unauthorized alien,
18 the court shall consider only the federal government's determination pursuant
19 to 8 United States Code section 1373(c). The federal government's
20 determination creates a rebuttable presumption of the employee's lawful
21 status. The court may take judicial notice of the federal government's
22 determination and may request the federal government to provide automated or
23 testimonial verification pursuant to 8 United States Code section 1373(c).

24 ~~I~~. J. For the purposes of this section, proof of verifying the
25 employment authorization of an employee through the e-verify program creates
26 a rebuttable presumption that an employer did not knowingly employ an
27 unauthorized alien.

28 ~~J~~. K. For the purposes of this section, an employer that establishes
29 that it has complied in good faith with the requirements of 8 United States
30 Code section 1324a(b) establishes an affirmative defense that the employer
31 did not knowingly employ an unauthorized alien. An employer is considered to
32 have complied with the requirements of 8 United States Code section 1324a(b),

1 notwithstanding an isolated, sporadic or accidental technical or procedural
2 failure to meet the requirements, if there is a good faith attempt to comply
3 with the requirements.

4 L. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS
5 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT
6 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
7 VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW
8 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR
9 IDENTITIES.

10 Sec. 6. Section 23-212.01, Arizona Revised Statutes, is amended to
11 read:

12 23-212.01. Intentionally employing unauthorized aliens;
13 prohibition; false and frivolous complaints;
14 violation; classification; license suspension and
15 revocation; affirmative defense

16 A. An employer shall not intentionally employ an unauthorized alien.
17 If, in the case when an employer uses a contract, subcontract or other
18 independent contractor agreement to obtain the labor of an alien in this
19 state, the employer intentionally contracts with an unauthorized alien or
20 with a person who employs or contracts with an unauthorized alien to perform
21 the labor, the employer violates this subsection.

22 B. The attorney general shall prescribe a complaint form for a person
23 to allege a violation of subsection A of this section. The complainant shall
24 not be required to list the complainant's social security number on the
25 complaint form or to have the complaint form notarized. On receipt of a
26 complaint on a prescribed complaint form that an employer allegedly
27 intentionally employs an unauthorized alien, the attorney general or county
28 attorney shall investigate whether the employer has violated subsection A of
29 this section. If a complaint is received but is not submitted on a
30 prescribed complaint form, the attorney general or county attorney may
31 investigate whether the employer has violated subsection A of this section.
32 This subsection shall not be construed to prohibit the filing of anonymous

1 complaints that are not submitted on a prescribed complaint form. The
2 attorney general or county attorney shall not investigate complaints that are
3 based solely on race, color or national origin. A complaint that is
4 submitted to a county attorney shall be submitted to the county attorney in
5 the county in which the alleged unauthorized alien is or was employed by the
6 employer. The county sheriff or any other local law enforcement agency may
7 assist in investigating a complaint. **THE COUNTY ATTORNEY MAY TAKE EVIDENCE,**
8 **ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND**
9 **TESTIMONY OF WITNESSES AND CAUSE DEPOSITIONS TO BE TAKEN.** When investigating
10 a complaint, the attorney general or county attorney shall verify the work
11 authorization of the alleged unauthorized alien with the federal government
12 pursuant to 8 United States Code section 1373(c). A state, county or local
13 official shall not attempt to independently make a final determination on
14 whether an alien is authorized to work in the United States. An alien's
15 immigration status or work authorization status shall be verified with the
16 federal government pursuant to 8 United States Code section 1373(c). A
17 person who knowingly files a false and frivolous complaint under this
18 subsection is guilty of a class 3 misdemeanor.

19 **C. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION**
20 **ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1.**

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

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

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

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

1 ~~D.~~ E. An action for a violation of subsection A of this section shall
2 be brought against the employer by the county attorney in the county where
3 the unauthorized alien employee is or was employed by the employer. The
4 county attorney shall not bring an action against any employer for any
5 violation of subsection A of this section that occurs before January 1, 2008.
6 A second violation of this section shall be based only on an unauthorized
7 alien who is or was employed by the employer after an action has been brought
8 for a violation of subsection A of this section or section 23-212,
9 subsection A.

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

13 ~~F.~~ G. On a finding of a violation of subsection A of this section:

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

16 (a) Order the employer to terminate the employment of all unauthorized
17 aliens.

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

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

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

31 (ii) Any prior misconduct by the employer.

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

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

3 (v) The duration of the violation.

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

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

7 (d) Order the employer to file a signed sworn affidavit with the
8 county attorney. The affidavit shall state that the employer has terminated
9 the employment of all unauthorized aliens in this state and that the employer
10 will not intentionally or knowingly employ an unauthorized alien in this
11 state. The court shall order the appropriate agencies to suspend all
12 licenses subject to this subdivision that are held by the employer if the
13 employer fails to file a signed sworn affidavit with the county attorney
14 within three business days after the order is issued. All licenses that are
15 suspended under this subdivision for failing to file a signed sworn affidavit
16 shall remain suspended until the employer files a signed sworn affidavit with
17 the county attorney. For the purposes of this subdivision, the licenses that
18 are subject to suspension under this subdivision are all licenses that are
19 held by the employer specific to the business location where the unauthorized
20 alien performed work. If the employer does not hold a license specific to
21 the business location where the unauthorized alien performed work, but a
22 license is necessary to operate the employer's business in general, the
23 licenses that are subject to suspension under this subdivision are all
24 licenses that are held by the employer at the employer's primary place of
25 business. On receipt of the court's order and notwithstanding any other law,
26 the appropriate agencies shall suspend the licenses according to the court's
27 order. The court shall send a copy of the court's order to the attorney
28 general and the attorney general shall maintain the copy pursuant to
29 subsection ~~G~~ H of this section.

30 2. For a second violation, as described in paragraph 3 of this
31 subsection, the court shall order the appropriate agencies to permanently
32 revoke all licenses that are held by the employer specific to the business

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

9 3. The violation shall be considered:

10 (a) A first violation by an employer at a business location if the
11 violation did not occur during a probationary period ordered by the court
12 under this subsection or section 23-212, subsection ~~F~~ G for that employer's
13 business location.

14 (b) A second violation by an employer at a business location if the
15 violation occurred during a probationary period ordered by the court under
16 this subsection or section 23-212, subsection ~~F~~ G for that employer's
17 business location.

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

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

1 notify the employer by certified mail of the government entity's
2 determination of noncompliance and the employer's right to appeal the
3 determination. On a final determination of noncompliance, the employer shall
4 repay all monies received as an economic development incentive to the
5 government entity within thirty days of the final determination. For the
6 purposes of this subsection:

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

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

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

18 D. A VIOLATION OF SUBSECTION A IS A CLASS 3 MISDEMEANOR.

19 Sec. 8. Section 28-3511, Arizona Revised Statutes, is amended to read:

20 28-3511. Removal and immobilization or impoundment of vehicle

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

24 1. The person's driving privilege is suspended or revoked for any
25 reason.

26 2. The person has not ever been issued a valid driver license or
27 permit by this state and the person does not produce evidence of ever having
28 a valid driver license or permit issued by another jurisdiction. This
29 paragraph does not apply to the operation of an implement of husbandry.
30

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

6 4. THE PERSON IS TRANSPORTING, MOVING, CONCEALING, HARBORING OR
7 SHIELDING OR ATTEMPTING TO TRANSPORT, MOVE, CONCEAL, HARBOR OR SHIELD AN
8 ALIEN IN THIS STATE IN A VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS
9 THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED
10 STATES IN VIOLATION OF LAW.

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

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

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

20 3. The person is driving a vehicle that is involved in an accident
21 that results in either property damage or injury to or death of another
22 person.

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

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

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

4 2. The spouse of the driver is with the driver at the time of the
5 arrest.

6 3. The peace officer has reasonable grounds to believe that the spouse
7 of the driver:

8 (a) Has a valid driver license.

9 (b) Is not impaired by intoxicating liquor, any drug, a vapor
10 releasing substance containing a toxic substance or any combination of
11 liquor, drugs or vapor releasing substances.

12 (c) Does not have any spirituous liquor in the spouse's body if the
13 spouse is under twenty-one years of age.

14 4. The spouse notifies the peace officer that the spouse will drive
15 the vehicle from the place of arrest to the driver's home or other place of
16 safety.

17 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
18 subsection.

19 E. Except as otherwise provided in this article, a vehicle that is
20 removed and either immobilized or impounded pursuant to subsection A, B or C
21 of this section shall be immobilized or impounded for thirty days. An
22 insurance company does not have a duty to pay any benefits for charges or
23 fees for immobilization or impoundment.

24 F. The owner of a vehicle that is removed and either immobilized or
25 impounded pursuant to subsection A, B or C of this section, the spouse of the
26 owner and each person identified on the department's record with an interest
27 in the vehicle shall be provided with an opportunity for an immobilization or
28 poststorage hearing pursuant to section 28-3514.

29 Sec. 9. Severability, implementation and construction

30 A. If a provision of this act or its application to any person or
31 circumstance is held invalid, the invalidity does not affect other provisions
32 or applications of the act that can be given effect without the invalid

1 provision or application, and to this end the provisions of this act are
2 severable.

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

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

8 Sec. 10. Short title

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

11 Amend title to conform

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DAVID M. GOWAN, SR.