

REFERENCE TITLE: immigration; law enforcement; repeal.

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

## HB 2651

Introduced by  
Representatives Gonzales, Alston, Hernández, Miranda, Quezada, Saldate,  
Wheeler; Cardenas, Contreras, Dalessandro, Gabaldón, Senator Bradley

### AN ACT

REPEALING TITLE 11, CHAPTER 7, ARTICLE 8, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-1509, 13-2928, 13-2929 AND 41-1724, ARIZONA REVISED STATUTES; AMENDING SECTIONS 12-116.04, 13-2319, 13-3883, 23-212, 23-212.01, 23-214 AND 28-3511, ARIZONA REVISED STATUTES; RELATING TO IMMIGRATION AND BORDER SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 A. Title 11, chapter 7, article 8, Arizona Revised Statutes, is  
4 repealed.

5 B. Sections 13-1509, 13-2928, 13-2929 and 41-1724, Arizona Revised  
6 Statutes, are repealed.

7 Sec. 2. Section 12-116.04, Arizona Revised Statutes, is amended to  
8 read:

9 12-116.04. Assessment; law enforcement officer equipment

10 A. In addition to any other penalty assessment provided by law, a  
11 penalty assessment shall be levied in an amount of thirteen dollars on every  
12 fine, penalty and forfeiture imposed and collected by the courts for criminal  
13 offenses and any civil penalty imposed and collected for a civil traffic  
14 violation and fine, penalty or forfeiture for a violation of the motor  
15 vehicle statutes, for any local ordinance relating to the stopping, standing  
16 or operation of a vehicle or for a violation of the game and fish statutes in  
17 title 17.

18 B. The court shall transmit the assessments collected pursuant to this  
19 section and a remittance report of the fines, civil penalties and assessments  
20 collected pursuant to this section to the county treasurer, except that  
21 municipal courts shall transmit the assessments and the remittance report of  
22 the fines, civil penalties and assessments to the city treasurer.

23 C. The city or county treasurer shall transmit eight dollars of the  
24 assessment and the remittance report to the state treasurer. ~~The state~~  
25 ~~treasurer shall~~ FOR deposit ~~four dollars of the assessment~~ in the public  
26 safety equipment fund established by section 41-1723 ~~and the remaining four~~  
27 ~~dollars of the assessment in the gang and immigration intelligence team~~  
28 ~~enforcement mission border security and law enforcement subaccount~~  
29 ~~established by section 41-1724.~~

30 D. The city or county treasurer shall transmit four dollars of the  
31 assessment and the remittance report to the agency that investigated the  
32 offense or issued the citation to be used to supplement, not supplant, monies  
33 available for officer safety equipment.

34 E. The city treasurer shall transmit one dollar of the assessment and  
35 the remittance report to the county treasurer. The county treasurer shall  
36 transmit one dollar of the assessment and any monies received from the city  
37 treasurer pursuant to this subsection to the following entities to be used to  
38 improve, maintain and enhance the ability to collect and manage monies  
39 assessed or received by the courts, to improve court automation and to  
40 improve case processing or the administration of justice:

41 1. In a county with a population of less than two million persons, to  
42 the justice courts, distributed proportionally based on the judicial  
43 productivity credits calculated pursuant to section 22-125.

44 2. In a county with a population of two million persons or more, to  
45 the justice court administration.

1           Sec. 3. Section 13-2319, Arizona Revised Statutes, is amended to read:  
2           13-2319. Smuggling; classification; definitions

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

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

6           C. Notwithstanding subsection B of this section, a violation of this  
7 section:

8           1. Is a class 2 felony if the human being who is smuggled is under  
9 eighteen years of age and is not accompanied by a family member over eighteen  
10 years of age or the offense involved the use of a deadly weapon or dangerous  
11 instrument.

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

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

20           ~~E. Notwithstanding any other law, in the enforcement of this section a~~  
21 ~~peace officer may lawfully stop any person who is operating a motor vehicle~~  
22 ~~if the officer has reasonable suspicion to believe the person is in violation~~  
23 ~~of any civil traffic law.~~

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

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

28           2. "Procurement of transportation" means any participation in or  
29 facilitation of transportation and includes:

30           (a) Providing services that facilitate transportation including travel  
31 arrangement services or money transmission services.

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

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

1           Sec. 4. Section 13-3883, Arizona Revised Statutes, is amended to read:  
2           13-3883. Arrest by officer without warrant

3           A. A peace officer, without a warrant, may arrest a person if the  
4 officer has probable cause to believe:

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

7           2. A misdemeanor has been committed in the officer's presence and  
8 probable cause to believe the person to be arrested has committed the  
9 offense.

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

13          4. A misdemeanor or a petty offense has been committed and probable  
14 cause to believe the person to be arrested has committed the offense. A  
15 person arrested under this paragraph is eligible for release under section  
16 13-3903.

17          ~~5. The person to be arrested has committed any public offense that~~  
18 ~~makes the person removable from the United States.~~

19          B. A peace officer may stop and detain a person as is reasonably  
20 necessary to investigate an actual or suspected violation of any traffic law  
21 committed in the officer's presence and may serve a copy of the traffic  
22 complaint for any alleged civil or criminal traffic violation. A peace  
23 officer who serves a copy of the traffic complaint shall do so within a  
24 reasonable time of the alleged criminal or civil traffic violation.

25          Sec. 5. Section 23-212, Arizona Revised Statutes, is amended to read:  
26          23-212. Knowingly employing unauthorized aliens: prohibition;  
27                 false and frivolous complaints: violation;  
28                 classification: license suspension and revocation

29          A. An employer shall not knowingly employ an unauthorized alien. If,  
30 in the case when an employer uses a contract, subcontract or other  
31 independent contractor agreement to obtain the labor of an alien in this  
32 state, the employer knowingly contracts with an unauthorized alien or with a  
33 person who employs or contracts with an unauthorized alien to perform the  
34 labor, the employer violates this subsection.

35          B. The attorney general shall prescribe a complaint form for a person  
36 to allege a violation of subsection A of this section. The complainant shall  
37 not be required to list the complainant's social security number on the  
38 complaint form or to have the complaint form notarized. On receipt of a  
39 complaint on a prescribed complaint form that an employer allegedly knowingly  
40 employs an unauthorized alien, the attorney general or county attorney shall  
41 investigate whether the employer has violated subsection A of this section.  
42 If a complaint is received but is not submitted on a prescribed complaint  
43 form, the attorney general or county attorney may investigate whether the  
44 employer has violated subsection A of this section. This subsection shall  
45 not be construed to prohibit the filing of anonymous complaints that are not

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

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

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

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

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

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

34 E. For any action in superior court under this section, the court  
35 shall expedite the action, including assigning the hearing at the earliest  
36 practicable date.

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

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

40 (a) Shall order the employer to terminate the employment of all  
41 unauthorized aliens.

42 (b) Shall order the employer to be subject to a three year  
43 probationary period for the business location where the unauthorized alien  
44 performed work. During the probationary period the employer shall file  
45 quarterly reports in the form provided in section 23-722.01 with the county

1 attorney of each new employee who is hired by the employer at the business  
2 location where the unauthorized alien performed work.

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

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

- 34 (i) The number of unauthorized aliens employed by the employer.
- 35 (ii) Any prior misconduct by the employer.
- 36 (iii) The degree of harm resulting from the violation.
- 37 (iv) Whether the employer made good faith efforts to comply with any  
38 applicable requirements.
- 39 (v) The duration of the violation.
- 40 (vi) The role of the directors, officers or principals of the employer  
41 in the violation.
- 42 (vii) Any other factors the court deems appropriate.

43 2. For a second violation, as described in paragraph 3 of this  
44 subsection, the court shall order the appropriate agencies to permanently  
45 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 23-212.01, subsection F 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 23-212.01, subsection F for that employer's  
17 business location.

18 G. The attorney general shall maintain copies of court orders that are  
19 received pursuant to subsection F 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. On determining whether an employee is an unauthorized alien, the  
24 court shall consider only the federal government's determination pursuant to  
25 8 United States Code section 1373(c). The federal government's determination  
26 creates a rebuttable presumption of the employee's lawful status. The court  
27 may take judicial notice of the federal government's determination and may  
28 request the federal government to provide automated or testimonial  
29 verification pursuant to 8 United States Code section 1373(c).

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

34 J. For the purposes of this section, an employer that establishes that  
35 it has complied in good faith with the requirements of 8 United States Code  
36 section 1324a(b) establishes an affirmative defense that the employer did not  
37 knowingly employ an unauthorized alien. An employer is considered to have  
38 complied with the requirements of 8 United States Code section 1324a(b),  
39 notwithstanding an isolated, sporadic or accidental technical or procedural  
40 failure to meet the requirements, if there is a good faith attempt to comply  
41 with the requirements.

42 ~~K. It is an affirmative defense to a violation of subsection A of this~~  
43 ~~section that the employer was entrapped. To claim entrapment, the employer~~  
44 ~~must admit by the employer's testimony or other evidence the substantial~~

1 ~~elements of the violation. An employer who asserts an entrapment defense has~~  
2 ~~the burden of proving the following by a preponderance of the evidence:~~

3 ~~1. The idea of committing the violation started with law enforcement~~  
4 ~~officers or their agents rather than with the employer.~~

5 ~~2. The law enforcement officers or their agents urged and induced the~~  
6 ~~employer to commit the violation.~~

7 ~~3. The employer was not predisposed to commit the violation before the~~  
8 ~~law enforcement officers or their agents urged and induced the employer to~~  
9 ~~commit the violation.~~

10 ~~L. An employer does not establish entrapment if the employer was~~  
11 ~~predisposed to violate subsection A of this section and the law enforcement~~  
12 ~~officers or their agents merely provided the employer with an opportunity to~~  
13 ~~commit the violation. It is not entrapment for law enforcement officers or~~  
14 ~~their agents merely to use a ruse or to conceal their identity. The conduct~~  
15 ~~of law enforcement officers and their agents may be considered in determining~~  
16 ~~if an employer has proven entrapment.~~

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

19 23-212.01. Intentionally employing unauthorized aliens;  
20 prohibition; false and frivolous complaints;  
21 violation; classification; license suspension and  
22 revocation

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

29 B. The attorney general shall prescribe a complaint form for a person  
30 to allege a violation of subsection A of this section. The complainant shall  
31 not be required to list the complainant's social security number on the  
32 complaint form or to have the complaint form notarized. On receipt of a  
33 complaint on a prescribed complaint form that an employer allegedly  
34 intentionally employs an unauthorized alien, the attorney general or county  
35 attorney shall investigate whether the employer has violated subsection A of  
36 this section. If a complaint is received but is not submitted on a  
37 prescribed complaint form, the attorney general or county attorney may  
38 investigate whether the employer has violated subsection A of this section.  
39 This subsection shall not be construed to prohibit the filing of anonymous  
40 complaints that are not submitted on a prescribed complaint form. The  
41 attorney general or county attorney shall not investigate complaints that are  
42 based solely on race, color or national origin. A complaint that is  
43 submitted to a county attorney shall be submitted to the county attorney in  
44 the county in which the alleged unauthorized alien is or was employed by the  
45 employer. The county sheriff or any other local law enforcement agency may

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

11 C. If, after an investigation, the attorney general or county attorney  
12 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 of this section if the complaint  
19 was originally filed with the attorney general.

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

28 E. For any action in superior court under this section, the court  
29 shall expedite the action, including assigning the hearing at the earliest  
30 practicable date.

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

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

34 (a) Order the employer to terminate the employment of all unauthorized  
35 aliens.

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

42 (c) Order the appropriate agencies to suspend all licenses described  
43 in subdivision (d) of this paragraph that are held by the employer for a  
44 minimum of ten days. The court shall base its decision on the length of the  
45 suspension under this subdivision on any evidence or information submitted to

1 it during the action for a violation of this subsection and shall consider  
2 the following factors, if relevant:

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

4 (ii) Any prior misconduct by the employer.

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

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

8 (v) The duration of the violation.

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

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

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

35 2. For a second violation, as described in paragraph 3 of this  
36 subsection, the court shall order the appropriate agencies to permanently  
37 revoke all licenses that are held by the employer specific to the business  
38 location where the unauthorized alien performed work. If the employer does  
39 not hold a license specific to the business location where the unauthorized  
40 alien performed work, but a license is necessary to operate the employer's  
41 business in general, the court shall order the appropriate agencies to  
42 permanently revoke all licenses that are held by the employer at the  
43 employer's primary place of business. On receipt of the order and  
44 notwithstanding any other law, the appropriate agencies shall immediately  
45 revoke the licenses.

1           3. The violation shall be considered:

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

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

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

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

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

26          J. For the purposes of this section, an employer that establishes that  
27 it has complied in good faith with the requirements of 8 United States Code  
28 section 1324a(b) establishes an affirmative defense that the employer did not  
29 intentionally employ an unauthorized alien. An employer is considered to  
30 have complied with the requirements of 8 United States Code section 1324a(b),  
31 notwithstanding an isolated, sporadic or accidental technical or procedural  
32 failure to meet the requirements, if there is a good faith attempt to comply  
33 with the requirements.

34          ~~K. It is an affirmative defense to a violation of subsection A of this~~  
35 ~~section that the employer was entrapped. To claim entrapment, the employer~~  
36 ~~must admit by the employer's testimony or other evidence the substantial~~  
37 ~~elements of the violation. An employer who asserts an entrapment defense has~~  
38 ~~the burden of proving the following by a preponderance of the evidence:~~

39           ~~1. The idea of committing the violation started with law enforcement~~  
40 ~~officers or their agents rather than with the employer.~~

41           ~~2. The law enforcement officers or their agents urged and induced the~~  
42 ~~employer to commit the violation.~~

43           ~~3. The employer was not predisposed to commit the violation before the~~  
44 ~~law enforcement officers or their agents urged and induced the employer to~~  
45 ~~commit the violation.~~

1 ~~L. An employer does not establish entrapment if the employer was~~  
2 ~~predisposed to violate subsection A of this section and the law enforcement~~  
3 ~~officers or their agents merely provided the employer with an opportunity to~~  
4 ~~commit the violation. It is not entrapment for law enforcement officers or~~  
5 ~~their agents merely to use a ruse or to conceal their identity. The conduct~~  
6 ~~of law enforcement officers and their agents may be considered in determining~~  
7 ~~if an employer has proven entrapment.~~

8 Sec. 7. Section 23-214, Arizona Revised Statutes, is amended to read:

9 23-214. Verification of employment eligibility; e-verify  
10 program; economic development incentives; list of  
11 registered employers

12 A. After December 31, 2007, every employer, after hiring an employee,  
13 shall verify the employment eligibility of the employee through the e-verify  
14 program ~~and shall keep a record of the verification for the duration of the~~  
15 ~~employee's employment or at least three years, whichever is longer.~~

16 B. In addition to any other requirement for an employer to receive an  
17 economic development incentive from a government entity, the employer shall  
18 register with and participate in the e-verify program. Before receiving the  
19 economic development incentive, the employer shall provide proof to the  
20 government entity that the employer is registered with and is participating  
21 in the e-verify program. If the government entity determines that the  
22 employer is not complying with this subsection, the government entity shall  
23 notify the employer by certified mail of the government entity's  
24 determination of noncompliance and the employer's right to appeal the  
25 determination. On a final determination of noncompliance, the employer shall  
26 repay all monies received as an economic development incentive to the  
27 government entity within thirty days of the final determination. For the  
28 purposes of this subsection:

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

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

35 C. Every three months the attorney general shall request from the  
36 United States department of homeland security a list of employers from this  
37 state that are registered with the e-verify program. On receipt of the list  
38 of employers, the attorney general shall make the list available on the  
39 attorney general's website.

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

41 28-3511. Removal and immobilization or impoundment of vehicle

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

1           1. Except as otherwise provided in this paragraph, the person's  
2 driving privilege is suspended or revoked for any reason. A peace officer  
3 shall not cause the removal and either immobilization or impoundment of a  
4 vehicle pursuant to this paragraph if the person's privilege to drive is  
5 valid in this state.

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

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

15          ~~4. In furtherance of the illegal presence of an alien in the United  
16 States and in violation of a criminal offense, the person is transporting or  
17 moving or attempting to transport or move an alien in this state in a vehicle  
18 if the person knows or recklessly disregards the fact that the alien has come  
19 to, has entered or remains in the United States in violation of law.~~

20          ~~5. The person is concealing, harboring or shielding or attempting to  
21 conceal, harbor or shield from detection an alien in this state in a vehicle  
22 if the person knows or recklessly disregards the fact that the alien has come  
23 to, entered or remains in the United States in violation of law.~~

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

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

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

33           3. The person is driving a vehicle that is involved in an accident  
34 that results in either property damage or injury to or death of another  
35 person.

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

41          D. A peace officer shall not cause the removal and either the  
42 immobilization or impoundment of a vehicle pursuant to subsection C of this  
43 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.