REFERENCE TITLE: immigration; law enforcement; repeal

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2373

Introduced by
Representatives Gonzales, Alston, Cardenas, Gabaldón, Quezada, Saldate, Steele, Senator Gallardo

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Repeal

Title 11, chapter 7, article 8, Arizona Revised Statutes, is repealed.

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

12-116.04. Assessment; law enforcement officer equipment

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

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

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

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

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

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

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

Sec. 3. Repeal

Section 13-1509, Arizona Revised Statutes, is repealed.

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

13-2319. Smuggling; classification; definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. Repeal

Sections 13-2928 and 13-2929, Arizona Revised Statutes, are repealed.

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

13-3883. Arrest by officer without warrant

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

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

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

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

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

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

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

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

23-212. Knowingly employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Any prior misconduct by the employer.

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

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

(v) The duration of the violation.

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

(vii) Any other factors the court deems appropriate.

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

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

3. The violation shall be considered:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Any prior misconduct by the employer.

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

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

(v) The duration of the violation.

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

(vii) Any other factors the court deems appropriate.

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

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

3. The violation shall be considered:

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

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

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

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

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

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

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

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

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

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

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

Sec. 9. Section 23-214, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

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

28-3511. Removal and immobilization or impoundment of vehicle

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Has a valid driver license.

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

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

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

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

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

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

Sec. 11. Repeal

Section 41-1724, Arizona Revised Statutes, is repealed.