

REFERENCE TITLE: immigration; law enforcement; repeal.

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SB 1299

Introduced by
Senators Gallardo, Bradley, Dalessandro, Farley, Hobbs, Pancrazi;
Representatives Gabaldón, Gonzales, Mendez, Quezada, Steele: Senators
Ableser, Meza, Tovar; Representatives Mach, Saldate

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)

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

2 Section 1. Repeal

3 Title 11, chapter 7, article 8, Arizona Revised Statutes, is repealed.

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

6 12-116.04. Assessment: law enforcement officer equipment

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

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

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

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

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

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

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

43 Sec. 3. Repeal

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

1 Sec. 4. 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.

42 Sec. 5. Repeal

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

1 Sec. 6. 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. 7. 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. 8. 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. 9. 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. 10. Section 28-3511, Arizona Revised Statutes, is amended to
41 read:

42 28-3511. Removal and immobilization or impoundment of vehicle

43 A. A peace officer shall cause the removal and either immobilization
44 or impoundment of a vehicle if the peace officer determines that a person is
45 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 the operation of a vehicle due to a substantial emergency
14 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 immediately before the immobilization or impoundment shall be
28 provided with an opportunity for an immobilization or poststorage hearing
29 pursuant to section 28-3514.
30 Sec. 11. Repeal
31 Section 41-1724, Arizona Revised Statutes, is repealed.