

Ad Hoc Committee on Business Owners and Work Site Enforcement

Committee Report

Executive Summary

House of Representatives Ad Hoc Committee on Business Owners and Work Site Enforcement

On September 21, 2007, Speaker of the Arizona House of Representatives Jim Weiers invited fourteen members of the public, representing a wide range of business and economic interests from across the state, to serve on the House of Representatives Ad Hoc Committee on Business Owners and Work Site Enforcement (Committee). The Committee was chaired by the Speaker of the House, and provided the business community with a forum to discuss the new Legal Arizona Workers Act (Act). Additionally, the Committee was “to listen to business owners and members of the public, and determine whether there are valid proposals to clarify the law so that worksite enforcement efforts of law enforcement do not unintentionally harm good acting businesses.”

In a letter to the members of the Committee sent on November 1, 2007, Speaker Weiers indicated that he would direct staff to prepare a report of the Committee, detailing issues raised during Committee proceedings. A draft of the report was sent electronically to the Committee membership for review, comment and to provide the opportunity for members to submit any materials for inclusion in the report. Upon completion, the report will be distributed to every member of the Legislature as well as the Executive.

Speaker Weiers restated the purpose of the Committee in the November letter, “I do expect to see legislation as a direct result of the time and dedication you have put into this committee. Let me be clear, I cannot support any legislation that attempts to water down or weaken the law in any way. What I can support are changes that provide clarity of purpose and implementation to both law enforcement as well as businesses and that help create an environment where honest businesses can operate and thrive.”

The Committee met three times prior to the start of the Forty-Eighth Legislature Second Regular Session, and met for a final meeting on January 24, 2008 to approve the Final Report for distribution. On the following pages of this Executive Summary each of the twelve issue areas discussed by the members of the committee are summarized to give you a brief understanding of the work done by the members of the Committee. These summaries of the issues, as well as the complete version contained within the Final Report and any additional proposals submitted by individual members, are to be used as guidelines for the Legislature and Executive when crafting legislation in furtherance of this worksite enforcement law.

The members of the Committee as well as Speaker Weiers spent a great deal of time and thought on each of the issues discussed in the Committee and hope that the members of the Legislature and Executive will give equal consideration to these issue when crafting any legislation.

Executive Summary

Issues Discussed by Members of the Ad Hoc Committee on Business Owners and Work Site Enforcement

The Complaint Process

The Committee supported the idea that the Act should provide explicit anti-discrimination language so that complaints could not be based solely on race, ethnicity or any other discriminating factor. Additionally, the Committee discussed whether people could file anonymous complaints, although it appears that 14 out of the 15 counties likely would not accept anonymous complaints. The Committee expressed concern for businesses that could potentially spend valuable resources and time being investigated each time an anonymous complaint was received by law enforcement. The Committee believed that a single complaint form used by all fifteen counties would bring uniformity and consistency to the application process. The question of what constituted a “frivolous” complaint was raised and whether a class 3 misdemeanor was satisfactory. It was suggested that some strict penalties be put in place for those coming forth with meritless complaints.

Additional References to this issue can be found in the Final Report on pages: 14-16

Contractors and Independent Contractors

It was discussed that it was unclear how a contractor would be in violation of the law if one of its subcontractors hired unauthorized workers. In addition, there could be the possibility that a business could avoid liability of the law by creating a complex structure of corporate subsidiaries. Within this issue, the definitions of *employer*, *employee* and what constitutes an “employment relationship” were discussed.

Additional References to this issue can be found in the Final Report on pages: 17-18

Site Specific Violations

It was stated that the suspension of all licenses as a result of one offending location is a concern. The suspension or revocation is specific to the one location where the violation occurred. The question remains if an employer had the type of business that did not have location-specific licenses, would the general license be affected and would its suspension/revocation apply to all locations.

Additional References to this issue can be found in the Final Report on pages: 19-20

Statutory Definition of “Knowingly”

The committee discussed the fact that 8 U.S.C. Section 1324a allows for both actual knowledge and constructive knowledge. Some members of the committee expressed their concern with a constructive knowledge standard. Some committee members still voiced concern over the necessity of constructive knowledge in order to be used by attorneys to prove a violation of the law.

Additional References to this issue can be found in the Final Report on pages: 21-22

LLCs and Corporations

There was discussion that the possibility of revoking articles of incorporation or organization would create an incentive for businesses to stop organizing in Arizona and choose to organize in other states, which may result in a loss of revenue for the State. Businesses who organize in other states are considered foreign corporations. A foreign corporation may not transact business within Arizona until it has filed its application for authority to transact business here.

Additional References to this issue can be found in the Final Report on pages: 23-24

Out-of-State Employees

At the first meeting of the Committee, the agenda noted a discussion of the application of the Act to out-of-state employees. It was noted that although there is no definition for an out-of-state employee in the definition of *employee*, the definition does refer to an organization that transacts business in this State, thereby creating a State connection. It was suggested that an explicit distinction should be made.

Additional References to this issue can be found in the Final Report on page: 25

Anti-Discrimination Laws

The question was presented of whether this legislation in its current form would need a separate stand-alone anti-discrimination clause. There was testimony that state and federal laws apply without being explicitly stated. Nevertheless, there was support for an anti-discrimination clause.

Additional References to this issue can be found in the Final Report on pages: 15, 26

Burden of Proof

The committee discussed the dichotomy between the civil violation for knowingly or intentionally employing an unauthorized alien against the criminal violation for knowingly submitting a false and frivolous complaint. Some committee members

expressed concern that the Act can put an employer out of business when the State does not have to prove its case beyond a reasonable doubt.

Additional References to this issue can be found in the Final Report on page: 27

Reference to Federal Law

The Act contains a technical drafting error. The wrong reference to federal law is contained within the bill. The correct law citation is 8 U.S.C. Section 1324a (b). 8 U.S.C. Section 1324a (b) contains the language first put into place by the 1986 IRCA requiring the use of the I-9 form for employment verification. With the intended reference, employers would establish an affirmative defense that they did not intentionally or knowingly employ an unauthorized alien if they have, in good faith, complied with federal I-9 requirements.

Additional References to this issue can be found in the Final Report on page: 28

Exemption for Critical Infrastructure

Concerns were raised as to the potential impact of the Act on Arizona's critical infrastructure. There was discussion regarding how the Act would be enforced and how penalties would be implemented against offending companies that were exempt from license suspension or revocation.

Additional References to this issue can be found in the Final Report on page: 29

E-Verify

Committee members pointed out that the E-Verify System was susceptible to ID fraud. If one were to steal the identity of another and use that information to create fraudulent identifying documents, then the E-Verify System would respond to the query with an employment eligibility authorization, which is a cause for concern.

Additional References to this issue can be found in the Final Report on page: 18, 30

Licenses

There was discussion that the inclusion of organizational documents in the definition of a *license* may be considered incongruent with the common understanding of a license. In addition, current procedures and laws administered by the ACC do not contemplate the type of "suspension" of organizational documents provided under the Act. Finally, it was stated that the definition of a professional licenses was unclear.

Additional References to this issue can be found in the Final Report on page: 19, 31

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Introduction

In September of 2007, Speaker of the Arizona House of Representatives Jim Weiers announced that he would form a special Ad Hoc committee to meet and discuss the enactment of HB 2779 (Laws 2007, Ch. 279), the “Legal Arizona Workers Act.” In his letter inviting individuals to serve on the committee, the Speaker stated “This is a committee comprised of business owners, human resource personnel, attorneys, chamber representatives and law enforcement personnel. The objective of the committee is to give the business community a forum to discuss the newly enacted worksite enforcement law that goes into effect January 1, 2008.” The Ad Hoc Committee on Business Owners and Illegal Immigration was then formed “to listen to business owners and members of the public, and determine whether there are valid proposals to clarify the law so that worksite enforcement efforts of law enforcement do not unintentionally harm good acting businesses.”

In addition, the Speaker expanded on these ideas when making his opening remarks at the first meeting of the Committee, which was renamed to the Ad Hoc Committee on Business Owners and Work Site Enforcement:

“[W]hen I sponsor or support legislation, I look at how it will move this state forward and it could negatively impact our communities. With that in mind, the last thing that I want to see is the new worksite enforcement legislation adversely impacting any of the honest businesses in this state.

This legislation has been at the forefront of discussion for the past several years, whether it is a discussion here in the State Legislature or in Washington DC on the floor of Congress. There has been an outcry by the citizens across the nation for its elected leaders to do something. Nowhere has the outcry been so loud and so clear than here in Arizona.

Last session we passed a worksite enforcement bill in an attempt to ensure honesty and fairness among businesses. The federal government set the guidelines for this legislation. They set the parameters for what, as a state, we can and cannot do.

The law the Legislature passed and the Governor signed is a good law – designed to stop bad actors who knowingly employ illegal aliens. I have heard, however, the concerns raised by some of the members of the business community. I want to be sure that the law does nothing to stop law abiding businesses from setting up shop and thriving in Arizona.... As we sit here today we are looking at a January 1, 2008 implementation, and what I am asking from you is not whether we should have done this or whether we had the right, but rather, what can the Legislature do now to further help protect you and all the honest business owners of Arizona while maintaining the integrity of the law.”

Membership of the Committee

The Ad Hoc Committee on Business Owners and Work Site Enforcement (Committee) is comprised of 15 members. The Speaker of the Arizona House of Representatives is the only representative on the Committee and serves as the Chairman.

When considering the membership of the Ad Hoc Committee on Business Owners and Worksite Enforcement it was particularly important to find a broad range of intelligent individuals who could accurately represent the spectrum of those affected by the passage of the Arizona Legal Workers Act (Laws 2007, Chapter 279). The members who were appointed represent businesses from across the state ranging from agriculture, to fast food, to construction and to hospitality. The Committee could not be complete without the appointment of lawyers and legal representatives who can help explain the process and implementation as the new law begins to affect the state. The following members were chosen to serve as delegates of the people, speaking on behalf of business in this state.

Richard Bark is an attorney with Gallagher & Kennedy and worked on HB 2779 during the legislative session.

Richard Bibee is the General Manager for the Renaissance Scottsdale Resort.

Edwin Cook (Ed) has served as the Executive Director of the Arizona Prosecuting Attorneys' Advisory Council (APAAC) since July 1994. He is a Past President of the National Association of Prosecutor Coordinators (NAPC), a former member of the Board of Directors of the National District Attorneys Association (NDAA), and currently serves on the Advisory Committee of the National Center for Prosecution Ethics in Columbia, South Carolina.

Jolynn Clarke, is the Manager of Staffing for the Salt River Project. Salt River Project is the nation's third-largest public power and water utility and as such, provides a critical service to Arizona. SRP has also been a user of the federal e-Verify program for the past 18 months and understands its functionality and usability. Jolynn has been with SRP for 25 years. She holds a Master's degree in Organizational Management, a bachelor's degree in Industrial Psychology, and is a certified Senior Professional in Human Resources (SPHR).

Tim Dunn is the owner of Dunn Farms.

Mitch Laird is a Burger King franchisee.

Jason LeVecke is CEO and franchisee for Carl's Jr., Pizza Patron and Bill's Ghost and Spirits.

Randy Nye is the Sr. Vice President and General Counsel with Sundt Construction, Inc.

Doug Quelland is the owner of Thank Q Rentals.

Pat Quinn is the President of Qwest Arizona.

Armando Rios is the owner of Rios Consulting.

Ken Rosevear is the Executive Director for the Yuma Chamber of Commerce.

Todd Sanders is currently the Vice President of Public Affairs and Economic Development for the Greater Phoenix Chamber of Commerce. Todd served as a legislative research analyst at the Arizona House of Representatives for seven sessions. During his final session he served the Committee on Counties, Municipalities, and Military Affairs, under Chairman John Nelson. He is a native of Bogotá, Colombia and a graduate of Northern Arizona University with a Bachelor of Science in Political Science. Previous work experience includes: legislative committees on Utilities and Municipalities as well as Public Institutions and Counties, campaign Chairman for the Coconino County Attorney and contract work for British Petroleum. Todd also serves on the Board of Directors for the Arizona Mexico Commission.

Sarah Strunk is an attorney with Fennemore Craig and is a leading business and finance lawyer listed in both Chambers USA and Best Lawyers, representing both small and large employers in Arizona.

2006 Legislative Session –Employer Sanctions

In 2006, during the 47th Legislature, Second Regular Session of the state of Arizona, HB 2577: illegal aliens; employment; verification was introduced. Generally, the bill would have required employers to discharge employees if it is discovered that the employee provided an invalid social security number (SSN) and it further stipulated that an employer who verifies the immigration status of their employees through the Systematic Alien Verification for Entitlements (SAVE) program is not subject to any civil sanction or criminal penalty imposed for employing an illegal alien. The bill underwent a number of amendments and was ultimately passed out of the Legislature and transmitted to the Governor with the short title of “immigration law; employment; enforcement.” In its Conference Engrossed form, HB 2577 proposed numerous changes relating to immigration policy in Arizona.

In addition to the numerous immigration changes, the bill proposed the following provisions relating to the employment of unauthorized aliens:

1. The bill would have required an employer to discharge an employee if the employer discovered that the employee provided an invalid SSN to the employer. If the employer terminated the unauthorized alien in a timely manner, no sanction would be imposed.
2. Required the Attorney General (AG) after conducting an investigation determining that an employer knowingly employs an unauthorized worker, as verified by the AG with the federal government, to immediately: order the employer to cease and desist from employing the unauthorized worker and to discharge for cause other unauthorized workers identified in the order. Additionally, the AG must notify Immigration and Customs Enforcement (ICE) of the unauthorized worker.
3. Required the employer to comply with the cease and desist order within ten business days after the Attorney General confirms that the employer received the order, unless the employer has filed an appeal of the cease and desist order.
4. Allowed the employer that received a cease and desist order to either request a hearing before the Office of Administrative Hearings (OAH), or serve a notice of contest of the order. The Attorney General could then bring an action in superior court, seeking to enforce the order.
5. Allowed the AG to bring a civil cause of action to assess a civil penalty of up to \$5,000 and to have an employer’s license suspended or revoked if the employer failed to comply with a cease and desist order. Any civil penalties assessed were deposited in to the Border Security Fund.
6. Prohibited an agency from issuing a new license to an employer whose license had been revoked due to the employer’s failure to comply with a cease and desist order until two years after the date of revocation.
7. Required the Attorney General to notify the U.S. Citizenship and Immigration Services if the Attorney General or a county attorney determined an employer failed to complete and retain I-9 Forms as prescribed by federal law.

8. Stipulated that if the Attorney General determined that an employer has knowingly failed to comply with the unemployment insurance contribution, workers' compensation and income tax withholding requirements, the following was the maximum of the progressive penalties: A class 1 misdemeanor and required the court to sentence the employer to serve six months in jail, the maximum as allowed by law. Upon conviction, the court may order that the employer's business license be suspended or revoked. In addition, the court was required to order the employer to pay an additional assessment of \$6,000 per employee for which the employer knowingly failed to comply with the employment practices requirements. The court was also required to order the employer to pay an additional assessment equal to three times the amount of revenue, including interest, that was lost as a result of the violation of the employment practices requirements. The Attorney General was required to record an unpaid judgment of the court as a lien against the employer.
9. Required an employer, in order to receive a license to operate a business in Arizona from an agency, to provide a signed affirmation that the employer complied with all federal and state laws regarding the authorization for employment in the United States of every employee who is employed by the employer.
10. Prohibited an agency from issuing a business license to any employer who failed to submit a signed affirmation.
11. Required the Attorney General to annually select up to five percent of the names that have been submitted at random and conduct an audit of those employers to determine whether the employers knowingly employs unauthorized workers.
12. Prohibited the Attorney General from selecting an employer for an audit that was the subject of an audit within the preceding two years.
13. Required the Attorney General to conduct an annual audit of at least one state agency and one political subdivision of the state.
14. Created an Immigration Ombudsman-Citizens Aide (OCA) who is required to provide employers with information that helps employers to comply with federal immigration laws, to comply with state law regarding employment of unauthorized workers, employment practices requirements and audit requirements and to provide assistance to enroll employers in the Basic Pilot Program.
15. Appropriated \$100,000 and one FTE position from the state General Fund in FY 2006-2007 to the OCA for the Immigration OCA.
16. Required the state to indemnify an employer if any administrative or judicial action was brought against the employer as a result of the employer's good faith actions in compliance with the investigation of the employment of unauthorized workers, employment practices requirements or the audit provisions or any order, determination or notice of those provisions.
17. Required the state to verify and pay the actual damages and costs, including attorney fees, incurred by the employer in defense of the administrative or judicial action within 45 days after the employer submits the costs to the enforcement agency.

18. Exempted an employer from any civil or criminal penalty imposed by the state, or any administrative or judicial action for employing an unauthorized worker if the employer did any of the following: verified the immigration status of the employer's employees through the Basic Pilot Program, complied with federal and state laws regarding I-9 Forms and reporting employees to the Arizona Department of Economic Security, the Arizona Department of Revenue, the Internal Revenue Service and the Social Security Administration or made a good faith determination that the person providing the service to the employer was done through an independent contractor relationship.
19. Required complaints used by the Attorney General to begin an investigation of an employer for knowingly employing an unauthorized worker or for a violation of the employment practices requirements to be in writing and be signed by the complainant.
20. Required the Director of the Arizona Department of Administration to verify the authorization for employment in the United States of every state employee through the Basic Pilot Program that is hired after the state enters into the MOU that is required to participate in the program.
21. Stated the provisions regarding employment of unauthorized workers, employment practices requirements and audits did not require an employer to take any action that the employer believes in good faith would violate federal law.
22. Added the amount of salary or other compensation that is paid to an unauthorized worker that is knowingly hired by the taxpayer and that is deducted as a business expense to the calculation for Arizona gross income.

Governor Vetoes Legislature's 2006 Employer Sanctions Legislation (HB 2577)

On June 6, 2006 Governor Napolitano vetoed HB 2577. In her letter to Speaker Weiers regarding the veto, she directly addressed the provisions relating employee eligibility, stating that HB 2577 was a **"bill that offers complete amnesty to employers."** The Governor added, **"House Bill 2577 offers full amnesty to any employer who hires an illegal immigrant and gets caught"** and in the final paragraph of the letter advises **"without a strong employer sanctions provision, your bill hinders rather than helps."**

The Legislature's 2007 Response – The Legal Arizona Worker's Act

HB2779 – As introduced

In 2007, during the 48th Legislature, First Regular Session of the state of Arizona, HB 2779: fair and legal employment act, was introduced. HB 2779 prohibited any business entity in Arizona from knowingly employing an unauthorized alien and required business entities to file a signed sworn affidavit with the Secretary of State (SOS) that indicates they will not knowingly employ an unauthorized alien nor direct others to do so.

Investigation

Upon proper determination, the Attorney General was required to notify the county attorney to prosecute the business entity for filing a false sworn affidavit. The AG or county attorney was required to investigate signed written complaints that a business entity had hired unauthorized aliens. The bill allowed a business entity to correct a violation by either terminating the employment of the unauthorized alien or acquiring additional information from the employee to submit to the Basic Pilot Program (BPP), which results in the verification of the employment eligibility of the employee.

Penalties

Penalties for false swearing on the affidavit were as follows:

- The first violation was a Class 6 felony with an additional assessment of \$5,000-\$50,000 levied.
- The second violation was a Class 6 felony, cannot be lowered to a misdemeanor and included an assessment of \$10,000-\$100,000.
- The third violation was a Class 5 felony with an assessment of \$15,000-\$150,000.

The bill required the AG or county attorney to notify the appropriate agency to suspend the license of a business entity that failed to correct the violation as well as notify the appropriate agency to reinstate the license of a business entity and required the appropriate agency to immediately reinstate the license if the business filed a signed affidavit with the AG or county attorney. It specified that a second violation would result in suspension of the business entity's license which was not to be reinstated until the entity had signed and filed the affidavit. On a third violation, the AG or county attorney shall notify the appropriate agency to revoke the entity's license.

Miscellaneous/Appropriations

HB 2779 required the use of the BPP for the employment eligibility verification of all state employees. A procurement officer of the state was prohibited from awarding a

contract greater than \$10,000 to any contractor or subcontractor unless they verified the eligibility of their employees through the BPP.

The bill appropriated \$3,000,000 to the Department of Law for carrying out the provisions of HB 2779 and required a taxpayer to add back to their Arizona adjusted gross income any amount of salary or other compensation paid to an unauthorized alien who was knowingly hired, claimed and deducted as a business expense under the Internal Revenue Code.

HB2779 - As Passed the House (With Speaker Weiers adopted Floor Amendment)

Licensing Eligibility

This iteration of the bill required the Attorney General, on or before September 1, 2007, to prescribe the form of the legal employment affidavit (affidavit) as well as prescribe a notice form that explains the requirements of, and how to comply with, the affidavit. Every employer was required, on or before January 1, 2008, to file a signed sworn affidavit with the Secretary of State (SOS). Any employer that begins transacting business after January 1, 2008 had 30 days to file the affidavit. Every agency was required, after January 1, 2008, to provide the affidavit and notice forms to any employer that applies for a new license. The SOS was to provide an informational pamphlet regarding the BPP and federal immigration laws to employers upon receipt of an affidavit. Employers committed false swearing by filing a false sworn affidavit, believing it to be false, or by knowingly taking action that violates the sworn affidavit after filing the sworn affidavit. Any employer that failed to file a signed sworn affidavit would've been guilty of a class 1 misdemeanor. Employers failing to file the affidavit within ten days after criminal charges are initially filed, were guilty of a class 6 felony.

Penalties

The amendment provided a “three-strike” graduated penalty structure with monetary assessments levied against violating employers and criminal penalties for false swearing not directly associated with license suspension or revocation, unless the Court determined that the severity of the offense license penalties. The criminal and monetary penalties required the same burden of proof as other crimes; which is beyond a reasonable doubt.

Defenses

Proof of verifying the employment authorization of an employee through the BPP creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien. A person convicted of false swearing on an affidavit cannot be subject to subsequent prosecutions that are based on the same affidavit, as it related to the employment of additional unauthorized aliens. Specified that filing a false and frivolous complaint against an employer under these provisions is a class 2 misdemeanor. A person who files a false and frivolous complaint against an employer after being previously convicted of filing a false and frivolous complaint is guilty of a class 6 felony.

Specified that nothing is to be construed to require an employer to take action that they believe in good faith would violate federal or state law.

Verification of State Employees

The State, after hiring an employee, was required to verify the employment eligibility of the employee through the BPP. The Auditor General was to conduct a performance audit that evaluates the use of the BPP by the state and report the findings and any recommendations to the Speaker of the House of Representatives and the President of the Senate. After September 1, 2008 and after hiring an employee, political subdivisions would have to verify the employment eligibility of the employee through the BPP.

Appropriations

The bill appropriated \$500,000 to the Attorney General and \$200,000 to the Secretary of State and appropriated \$2,500,000 to the Arizona Department of Administration for distribution to county attorneys for enforcing any immigration related matters and the provisions of the bill.

HB2779 – Senate Engrossed/Conference Committee Engrossed

HB 2779 was further amended in the Senate, and was eventually sent to Conference Committee on June 6, 2007. Major changes to HB2779 made in the Senate included removing all provisions related to the *legal employment affidavit* and redefining *license*. The *legislative intent* clause regarding investigations was removed to require the AG and county attorney to investigate complaints. It lowered filing a false and frivolous complaint from a class 2 to a class 3 misdemeanor. For a first violation, licenses were required to be suspended unless the employer filed signed sworn affidavits with the appropriate entities. For a second violation, licenses were to be permanently revoked. The county attorney was prohibited from prosecuting violations occurring before March 1, 2008. Language affecting taxes paid on salary or wages paid to an unauthorized alien was removed. After March 1, 2008, it required every employer to utilize the BPP. The Department of Economic Security was to notify employers of the new law, its requirements, and how to comply. It removed the *legislative findings* clause, and changed the name from the “Arizona Fair and Legal Employment Act” to “Legal Arizona Workers Act.” The appropriation to the AG was reduced from \$500,000 to \$100,000 and the appropriation to the Secretary of State was removed entirely.

The Conference Engrossed version of HB 2779 was transmitted to the Governor on June 21, 2007 and was signed into law as Ch. 279 on July 2, 2007. The final version of HB 2779 prohibits an employer from intentionally employing an unauthorized alien or knowingly employing an unauthorized alien and requires the AG or county attorney, upon receipt of a complaint that an employer allegedly intentionally or knowingly employs an unauthorized alien, to investigate the complaint. However, the county attorney is prohibited from prosecuting violations occurring before January 1, 2008. The

bill specifies that filing a false and frivolous complaint against an employer under these provisions is a class 3 misdemeanor.

Penalties

For a first violation of *knowingly* employing an unauthorized alien, it requires the court to order the employer to terminate the employment of all unauthorized aliens and to suspend the appropriate licenses unless the employer files a signed sworn affidavit with the county attorney within three business days. If the affidavit is filed, the licenses are reinstated. If the affidavit is not filed, the court may order the suspension of licenses, not to exceed ten business days. Violators are subject to a three-year probationary period.

For a first violation of *intentionally* employing an unauthorized alien, the bill requires the court to order the employer to terminate the employment of all unauthorized aliens and to suspend the appropriate licenses for a minimum of ten business days. Violators are subject to a five-year probationary period. When suspending a license, the court shall base its decisions on the number of unauthorized aliens employed by the employer, any prior misconduct by the employer, the degree of harm resulting from the violation, whether the employer made good faith efforts to comply with any applicable requirements, the duration of the violation, the role of the directors, officers or principals of the employer in the violation, and any other factors the Court deems appropriate.

For a second violation during the probationary period, appropriate licenses are permanently revoked.

Legal Defenses

Proof of verifying the employment authorization of an employee through the BPP creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien. An employer who has complied in good faith with the requirements of 8 U.S.C § 1324b establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien. In addition, a provision was added that H.B. 2779 “shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.”

Miscellaneous/Appropriations

After December 31, 2008, HB 2779 every employer is required to utilize the BPP to verify employment eligibility. The bill appropriates \$2,600,000 from the state General Fund (GF) FY 2007-08 for carrying out these provisions. And finally, HB 2779 specifies that these provisions shall be known and cited as the “Legal Arizona Workers Act.”

Federal Immigration Law

Immigration Reform and Control Act of 1986

The federal Immigration Reform and Control Act of 1986 (IRCA) makes all United States employers responsible for verifying the identity and work authorization of all individuals, including United States citizens, hired after November 6, 1986. IRCA provides civil penalties for any person who knowingly hires an individual not authorized to work in the United States or who continues to employ an unauthorized alien. Additionally, employers are required to complete Employment Eligibility Verification forms (I-9 Forms) for each employee when hired. IRCA also required the Immigration and Naturalization Service to establish a system for verifying the immigration status of noncitizen applicants for certain types of federally funded benefits, such as Temporary Assistance for Needy Families, Medicaid, unemployment compensation, Title IV Educational Assistance and certain housing assistance programs. IRCA requires selected programs to participate in the Systematic Alien Verification for Entitlements (SAVE) Program. Other programs, such as the Food Stamp and Social Security programs, may also participate in the SAVE Program. State or local benefit programs and licensing bureaus that must verify an applicant's immigration status may participate in the SAVE Program.

I-9 Forms must be retained for three years after the date the person begins work or one year after the person's employment is terminated, whichever is later. Employers are required to make the I-9 Form available for inspection to an officer of the Bureau of Immigration and Customs Enforcement, the Department of Labor and/or the Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices. A person who hires an individual without complying with the I-9 Form requirements is subject to a civil penalty of between \$100 and \$1,000 for each violation.

As part of the I-9 completion process, individuals must provide employers with documentation that establishes identity and employment eligibility, photocopies of which must be retained by the employer. Potential employees may provide a document that establishes both identity and employment eligibility (List A) or they may provide a document that just establishes identity (List B) and a document that establishes employment eligibility (List C). On November 7, 2007, United States Citizenship and Immigration Services issued a revised I-9 form. The revised I-9 removes five documents previously accepted under List A. The documents removed are the Certificate of U.S. Citizenship, Certificate of Naturalization, Alien Registration Receipt Card, the unexpired Reentry Permit and the unexpired Refugee Travel Document. USCIS opted to remove the aforementioned documents "because they lack sufficient features to help deter counterfeiting, tampering, and fraud." In addition to removing five documents, the most recent version of the Employment Authorization Document was added to List A.

The provisions of IRCA relating to the employment of aliens were subsequently codified as 8 U.S.C. 1324a. Generally, 8 U.S.C. § 1324a prohibits a person or entity from knowingly hiring, recruiting, or referring for a fee, an unauthorized alien. 8 U.S.C. § 1324a(h)(3) defines an “unauthorized alien” as an alien that is not either lawfully admitted for permanent residence or authorized to be employed by Title 8, Chapter 12 of the U.S.C. or by the Attorney General. In addition, 8 U.S.C § 1324a(h)(2) states the following:

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

E-Verify

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated three pilot programs to test alternative types of electronic verification systems. The Web Basic Pilot Program was one of the three programs. Originally implemented in June of 2004, the Basic Pilot is jointly administered by the Social Security Administration and USCIS under the Department of Homeland Security. BPP allows employers to confirm the employment eligibility of all newly hired employees. The Basic Pilot Program involves verification checks of Social Security Administration and Department of Homeland Security databases by using an automated system to verify employment authorization. The system uses Social Security numbers (SSN), alien registration numbers and I-94 numbers (arrival/departure numbers) to perform the verification checks. Employers must register and complete a Memorandum of Understanding (MOU) and a web-based tutorial for participation in the Basic Pilot Program. An I-9 Form must be completed before the employer initiates a verification inquiry, and the employer is required to make the verification inquiries within three business days of hire. Employers are prohibited from using the system to prescreen applicants for employment. An employer’s participation in the BPP is voluntary, is free to participating employers and can be accessed via the Internet.

The BPP has been in operation since November 1997 and legislation signed by the President of the United States on December 3, 2003, extended the BPP through November 2008.

In September 2007, USCIS announced that the Basic Pilot Program would now be known as E-Verify.

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Complaint Process Under The Legal Arizona Workers Act

Current Statute

On receipt of a complaint, the attorney general or county attorney shall investigate whether the employer intentionally or knowingly employs an unauthorized alien. 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.

Presentations

Ed Cook briefed the Committee of some of the work the County Attorney members of APAAC have done to create a complaint form. At this time, the Maricopa County Attorney's Office (MCAO) has decided to not participate in the APAAC discussion on this issue. Mr. Cook explained that the APAAC membership is set by statute, that the group works together to achieve consensus, and that it has been reviewing Chapter 279, the worksite law. He stated that the goal was to look at potential issues with the law and to identify any changes or adjustments to make the law work, and to assure implementation of the legislative intent.

Mr. Cook also opined that the fourteen counties outside Maricopa would use their prosecutorial discretion and not investigate anonymous complaints. Mr. Cook handed out an example of the likely contents of an initial complaint form. He informed the committee that members may be requiring a signed and notarized complaint. Some committee members discussed the validity of these procedures in light of the statutory mandate that every complaint must be investigated by the county attorney or the Attorney General.

Mark Faull presented on the issue of complaints representing the Maricopa County Attorney's Office. He stated that the MCAO is waiting for U.S. District Court Judge Neil Wake's ruling on HB2779 (Laws 2007, Chapter 279) before making any public statements about the design of the complaint process and how his office will work with businesses. He explained that the MCAO will work slowly to define compliance and policies, and would not speak publicly about this for probably six more weeks. Mr. Faull also explained that the issue of anonymous complaints will be handled differently, and cited the example of the Human Smuggling Act, which Maricopa County is aggressively prosecuting, as differentiated from the other fourteen counties. The County Attorney's

office believes that any findings from the federal court may have to be incorporated into the complaints process.

Committee Discussion Regarding Complaint Process **Race-Based Complaints**

Several Committee members expressed concern over the investigation of race-based complaints. Chairman Weiers echoed the position of the committee members that complaints based solely on an employee's skin color or language are wholly unacceptable and that such complaints are without merit. Todd Sanders shared conversations that he had personally had with people who stated that they would file complaints against businesses that hire "brown-skinned" people or people who did not speak English.

The Committee discussed the idea that without any anti-discrimination language complaints could be based on race, ethnicity or any other discriminating factor and a county attorney or the Attorney General would be required to investigate under the statute.

Anonymity

The Committee discussed whether people could file anonymous complaints. In the testimony given by Ed Cook, it was determined that at this point, it appears as if 14 out of the 15 counties likely would not accept anonymous complaints, with Maricopa County being undetermined as to the specificity of their complaint process. The committee expressed concern for businesses that could potentially spend valuable resources and time being investigated each time an anonymous complaint was received by law enforcement. Additionally, some committee members discussed the potential for their business competitors to abuse the law and file anonymous and false complaints in order to gain a competitive advantage. Mr. Faull testified that anonymous complaints have led to the successful investigation and crackdown of human smuggling rings. He related that several human traffickers have been arrested based on anonymous complaints and hundreds of people being held captive in "drop houses" have been rescued and subsequently deported.

Uniformity

The committee discussed the notion that with one county opting to handle the complaint process separately from the others businesses would be burdened by inconsistency amongst law enforcement entities. As discussed in the presentation by Ed Cook, the Maricopa County Attorney's office opted to pursue its own policies and procedures in regards to the complaint process, so the information that he shared only reflects the general consensus of the fourteen other county attorney offices. Chairman Weiers stated that there cannot be inconsistency among the counties with their application of the law, and he stated his concern that there could be confusion between Maricopa County and the

fourteen other counties. He stated that it may be necessary to put into statute a standardized form that all must use.

False and Frivolous Complaints

The committee discussed several issues in regards to false and frivolous complaints. The concerns raised by the committee were in regards to the question of what constituted a “frivolous” complaint and whether the current penalty of a class 3 misdemeanor for knowingly submitting a false and frivolous complaint penalty was satisfactory. Mr. Rios raised the issue at the second Committee meeting as to the classification of filing a false and frivolous complaint as a class 3 misdemeanor. At the request of Mr. Sanders, Mr. Cook outlined the penalties for misdemeanor in Arizona. The Speaker stated that he believed that there was an initiative filed that proposed raising false and frivolous complaints to a felony offense. Mr. Rios stated that he and the others he represents would have no objection to making it a felony offense. The Speaker responded that it is a very serious issue. In addition, the issue of false and frivolous complaints was discussed briefly at the Committee’s first hearing and arose during the discussion of state and federal anti-discrimination laws. On this occasion the discussion centered on what would constitute a “legitimate” complaint. In addition, Mr. Rios suggested that some strict penalties be put in place for those coming forth with false and frivolous complaints. He added that this would make employers more comfortable with the process, especially in light of the cost, including the loss of man-hours that would be required of an employer during an investigation.

Contractors and Independent Contractors

Current Law

A.R.S. Title 23, Section 211 as added by HB 2779 provides the following definitions:

"Employee" means any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.

"Employer" means any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons.

8 Code of Federal Regulations § 274a.1 contains the federal employer sanctions regulatory definitions. 8 CFR § 274a.1 provides the following relevant definitions:

Employee - means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;

Employer - means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and not the person or entity using the contract labor;

Employment - means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, or otherwise included within the provisions of the Anti-Reflagging Act codified at 46 U.S.C. 8704, but not including duties performed by nonimmigrant crewmen defined in sections 101 (a)(10) and (a)(15)(D) of the Act. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent;

Independent contractor - includes individuals or entities that carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an

opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and Sec. 274a.5 of this part;

Committee Discussion Regarding Contractors & Independent Contractors

The fifth item on the agenda for the October 24, 2007 meeting of the Committee was the “Impact of HB2779 (Laws 2007, Chapter 279) on Contractors and Subcontractors.” Randy Nye stated that he is very interested in the application of this law because finding skilled labor is a big problem, explaining that the median age of construction craft workers in 1988 was 33 years, and has now increased to 39 years. One of his biggest concerns with this bill is the effect it may have on the industry as it tries to find skilled workers.

Pat Quinn explained that he does not know if Qwest, as a contractor, would be in violation of the law if one of its subcontractors hired unauthorized workers. In addition, Mr. Quinn explained that several Arizona corporations have an organizational structure where the parent organization includes subsidiary corporations. He questioned how the law could impact these businesses if a single subsidiary has violated the law. Mr. Quinn also mentioned that a business could avoid liability of the law by creating a complex structure of corporate subsidiaries.

Mr. Bark asked what “employment relationship” in the statutory definition of “employee” means and if independent contractors were excluded, as they are under federal law. Chairman Weiers added that his understanding is that E-Verify cannot be run unless the employer is hiring someone, not contracting that person. At the Committee’s first meeting, Jim Drake, in a conversation relating to the definition of “employee” under HB 2779 had commented that the definition tries to capture a great many situations that may fall outside of the normal bounds because it specifies “an employment relationship” but does not mention the independent contractor situation. He noted that term is not defined and would have to be interpreted.

The issue was also raised regarding the application of this law to out-of-state contractors. The question in this situation concerned whether or not an out-of-state contractor would have to utilize E-Verify and would they be subject to the sanctions provisions of the law. Steve Moortel, a Policy Advisor to the Majority with the Arizona House of Representatives, addressed the Committee, noting that there are essentially three requirements, all of which must be met, in order for the use of e-verify to be required. First, the entity must transact business in Arizona. Second, the entity must hold a license (as defined in the Act) issued by an agency of Arizona. And lastly, the company must employ one or more individuals to perform services in Arizona.

Mr. Quelland asked if an employer could obtain a competitive advantage by circumventing the law and how can that be avoided; Mr. Bibee replied that the subcontractor issue is not clearly defined and is a very critical piece of this issue.

Site Specific Violations

Current Statute

HB 2779 refers to the suspension and revocation of licenses as a “sanction” on employers that intentionally or knowingly employ an unauthorized alien. In carrying out these sanctions, instruction is provided to the courts in the following form:

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 and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work. If a license is not necessary to operate the employer's business at the specific 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.

Committee Discussion Regarding Site Specific Violations

The Committee discussed the issue of site-specific violations at its first meeting. Todd Sanders stated that the suspension of all licenses as a result of one offending location is a concern of his members. Mr. Bark said he believes the language on page 4, lines 2 through 5 of the Legal Arizona Workers Act, states that the suspension or revocation is specific to the one location where the violation occurred. The question remains if an employer had the type of business that did not have location-specific licenses, would the general license be affected and would the suspension/revocation apply to all locations.

Ms. Strunk pointed out that many businesses have more than one license. She said this language is confusing as to what license gets revoked. She queried whether the license specific to that location would be revoked while the other licenses that apply to all locations would remain in effect. She brought up the situation of a convenience market that has a liquor license that is site specific and asked whether a violation would result in the suspension of the liquor license for that particular convenience market while the other locations remain open under their general licenses (e.g. Transaction Privilege Tax license). She expressed concern about a market with multiple sites and the shareholders

of that corporation who may know nothing about the hiring practices who may lose their limited liability shield.

Mr. Bark stated that he believes the question to be raised is what type of businesses do not have location-specific licenses. In response, Ms. Strunk said there are many businesses that do not have location-specific licenses. Mr. Dunn suggested that it gets complicated if the business is a limited liability corporation and has several different locations under separate management but under the same ownership. Mr. LeVecke added that his business has 67 locations in the State, so that would be very problematic for him, but he also advised that some cities require separate business licenses.

Mr. Sanders offered that “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 and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work.” should read “For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are licenses that are held by the employer and that are specific to the operation of the employer's business at the employer's business location where the unauthorized alien performed work.” Ms. Strunk also suggested striking “and” from the sentence. She also noted there is no way to split up articles of incorporation at one site and not at another; it is either lost or not lost.

Mr. Bark said he believes the law should be as location-specific as possible. He suggested that staff, Legislative Council and the Rules Attorney work on this issue.

At the November 1, 2007 meeting the issue of site-specificity was once again raised during the Committee's discussion of Mr. Laird's proposed changes. Ms. Strunk concern about the confusion regarding location-specific licenses and general licenses. Mr. Laird commented that the fair thing would be to make it location-specific. Ms. Strunk concurred, suggesting it say “if there is no site-specific license, then the state would move up to the general license.”

Actual Knowledge/Constructive Knowledge

Current Statute

"Knowingly employ an unauthorized alien" means the actions described in 8 United States Code section 1324a. This term shall be interpreted consistently with 8 United States Code Section 1324a and any applicable federal rules and regulations.

An employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien

Synopsis of Federal Definition of "Knowingly"

Actual knowledge - "Actual knowledge" is sometimes described as "first-hand" information that the employer receives directly from the employee or from the employee's documents. Some examples of actual knowledge include the following: (1) The prospective employee tells the employer that he or she is not present in the United States legally; (2) The prospective employee tells the employer that he or she does not have work authorization; (3) The prospective employee asks the employer where he can obtain work documents; and (4) The employer is aware that an employee's work authorization documents have expired and that the employee has not obtained renewal documents.

Constructive Knowledge - "Constructive knowledge" is sometimes described as "second-hand" information and is defined in federal regulations as "knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition." This may include, but is not limited to, situations where an employer: (1) Fails to complete or improperly completes the Employment Eligibility Verification Form, I-9; (2) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or (3) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf. It is important to note that knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in the federal definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual. (8 CFR Part 274a.1)

Committee Discussion Regarding Statutory Definition of "Knowingly"

The committee discussed the fact that 8 U.S.C. Section 1324a allows for both actual knowledge and constructive knowledge. Some members of the committee expressed their concern with a constructive knowledge standard. Testimony by committee member Ed Cook unveiled that that it was his belief that APAAC would essentially require actual

knowledge to be proven although if constructive knowledge is imputed it can be used to prove actual knowledge. Despite this testimony, some committee members still voiced concern over constructive knowledge being used by attorneys to prove a violation of the law. In addition, several committee members questioned Mr. Cook's interpretation of the statute that the definition of "knowingly employ an unauthorized alien" in the Legal Arizona Workers Act did not incorporate both actual and constructive knowledge because the Act provides that "this term shall be interpreted consistently with 8 United States Code Section 1324a and any applicable federal rules and regulations." Arizona Revised Statutes. Section 23-211(6).

Loss of Limited Liability/Articles of Incorporation

Current Law

Documents creating corporations and limited liability companies

The Legal Arizona Workers Act requires the suspension or revocation of all licenses of businesses that knowingly hire an illegal alien. The Act includes in its definition of “license” the documents that create corporations and limited liability companies. To establish a corporation, one must file Articles of Incorporation pursuant to Title 10 with the Corporation Commission. To create a limited liability company, one must file Articles of Organization pursuant to Title 29 with the Commission. Corporate existence does not begin until these documents are filed.

A corporation or a limited liability company is a legal entity that is distinct from its owners.

Creation of a corporation or limited liability company provides protection of the shareholders and directors from personal liability for the debts of the business. Several concerns were raised regarding how the new law impacts the status of these documents.

Suspension of Documents for knowingly hiring an illegal alien

Upon a first violation of the Act, a court may suspend all licenses of a business for up to ten days. Concern was raised by some committee members that there is no current mechanism for “suspending” articles of incorporation or articles of organization. Instead, the Corporation Commission has the authority to place a business “not in good standing” for the period of time that the business is out of compliance with state law (such as failing to file its Annual Report with the Commission). Furthermore, questions were raised about how debts and liabilities of the business would be treated during the time that the business was under suspension. Would shareholders or directors be personally liable for these obligations?

Revocation of documents for knowingly hiring an illegal alien

Upon a second violation of the Act, a court shall revoke all licenses. Concern was raised that revocation of the corporate entity would expose shareholders and corporate directors to personal liability. One of the primary reasons for creating a corporation or a limited liability company is to provide the entity’s owners limited liability for the business organization’s obligations. Questions were asked whether shareholders, directors or members would be personally responsible for the financial obligations of the business if its articles were revoked. If so, this may create a disincentive for businesses to locate in Arizona. When a corporation voluntarily dissolves, state law requires it to wind up and liquidate its affairs. The corporation must notify its known claimants in writing of the dissolution. Since the Act is silent and there is no case law that addresses this issue, there is no way to determine whether the obligations would be paid out of the business’s

existing assets as in the case of a judicial dissolution or if the revocation would act as the instantaneous elimination of the corporate entity and thus expose the shareholders, directors and members to personal liability.

Under current Arizona law, a business entity may decide to voluntarily dissolve. Additionally, the Corporation Commission may bring an action to administratively dissolve a corporation for various reasons (A.R.S. §10-1420). Finally, judicial dissolution of a corporation may be possible if a corporation exceeds or abuses its authority (A.R.S. §10-1430).

Committee Discussion Regarding LLCs and Corporations

There was discussion that the possibility of removing this limited liability shield would create an incentive for businesses to stop organizing in Arizona and choose to organize in other states. This may result in a loss of revenue for the state. However, the Commission charges \$60.00 to file articles of incorporation and \$50.00 to file articles of organization. Businesses who organize in other states are considered foreign corporations. A foreign corporation may not transact business within Arizona until it has filed its application for authority to transact business here. The commission's fees for foreign corporations to transact business in Arizona are \$175.00/\$150.00 respectively.

Application to out-of-state employees

Current Law

A.R.S. Title 23, Section 211 as added by HB 2779 provides the following definitions:

"Employee" means any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.

"Employer" means any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons.

Committee Discussion Regarding Out-of-State Employees

At the first meeting of the Committee, the agenda noted a discussion of the application of HB 2779 (Laws 2007, Ch. 279) to out-of-state employees. A.R.S. Title 23, Section 211 as added by HB 2779, defines *employee* as “any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.”

Mr. Sanders began the discussion and inquired as to whether or not out-of-state employees would be subject to this legislation and whether they are subject to the verification process.

Jim Drake, Rules Attorney for the Arizona House of Representatives noted that there is no definition for an out-of-state employee in the definition of *employee*, adding that the definition refers to an organization that transacts business in this State, thereby, creating a State connection.

Committee member Jason LeVecke questioned if there would be an objection to making such a distinction explicit in the bill. Mr. Drake replied that he thinks it is clearly expressed in the bill; the provisions only apply to in-state employees.

Mr. Sanders raised the issue of temporary workers. He asked whether liability would fall on the employer or the company who supplies the temporary workers. Mr. Drake referred back to the definition of “employee.” He said the definition tries to capture a great many situations that may fall outside of the normal bounds because it specifies “an employment relationship” but does not mention the independent contractor situation. He said that term is not defined and would have to be interpreted.

Anti-discrimination

Current Law

The Arizona Civil Rights Act (ACRA) prohibits discrimination based on race, color, religion, sex, national origin or ancestry in the areas of employment, voting and places of public accommodation. ACRA was enacted in 1965 and generally mirror the federal Civil Rights Act.

A.R.S. Title 41, Section 1463(B)(1) states that “It is an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions or privileges of employment because of the individual’s race, color, religion, sex, age, disability or national origin.

Committee Discussion Regarding Anti-Discrimination Laws

Another topic of discussion at the first committee meeting was employment anti-discrimination laws. Mr. Drake testified regarding the question of whether this legislation in its current form would need a separate stand-alone anti-discrimination clause. He believes that it does not. In addition to the federal law on this subject, Arizona has its own Civil Rights Act that prevents discrimination, such as labor, public accommodation and voting. Furthermore, statutory construction requires the force and effect of ACRA to apply to all state laws relating to employment, voting and places of public accommodation. For example, the Landlord/Tenant Act regulates the relationship between landlord and tenant. There is no anti-discrimination clause in these statutes. In the Arizona labor statutes, A.R.S. Section 23-493.04 regulates the drug testing of employees. That law does not specifically mention that an employer can’t discriminate on the basis of race when selecting employees for drug testing. Also in the labor statutes, there are laws such as A.R.S. Section 23-1385 addressing unfair labor practices for employers hiring agricultural laborers, which do not specifically mention discrimination. Finally, the election laws contained in Title 16 contain no mention of the prohibition against race based discrimination. These laws do not contain specific anti-discrimination language because ACRA applies.

In addition, it was pointed out that the bill itself contains reinforcing language. A.R.S. Title 23, Section 213 as added by HB 2779 states that “This article shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.”

Burden of Proof

Criminal/Civil Law

In criminal litigation, the prosecution has the burden of proof to prove that the defendant is guilty. The State must prove the defendant committed all the elements of the crime beyond a reasonable doubt.

In civil cases, the party that brings the lawsuit generally has the burden of proving the party's case. The plaintiff's burden of proof in civil matters is not as high as in criminal cases.

Committee Discussion Regarding Burden of Proof

Laws 2007, Chapter 279 provides that a violation for knowingly or intentionally employing an unauthorized alien is a civil penalty to be resolved in civil court. The committee discussed the dichotomy between the civil violation for knowingly or intentionally employing an unauthorized alien against the criminal violation for knowingly submitting a false and frivolous complaint. In this discussion Mr. Nye stated his belief that there is an anomaly here in the standard of proof: enforcing the statute is a civil matter, requiring a preponderance of the evidence, but a Class I is a criminal matter requiring proof beyond a reasonable doubt. Mr. Bark replied that federal law preempts state law and prohibits criminal enforcement of employer sanctions.

Safe Harbors

Some committee members expressed concern that the Act creates a "death penalty" for businesses by putting the employer out of business when the State does not have to prove its case beyond a reasonable doubt. In addition, some members of the Committee discussed the adequacy of the rebuttable presumption "defense" the Act provides for employers who run their new employees through E-Verify. Members also referenced the affirmative defense provided for employers who follow the federal I-9 requirements. Concerns were noted by some committee members that these defenses were not adequate if the State is not required to prove its case beyond a reasonable doubt.

Correct Reference to Federal Law

Current Law

Arizona Revised Statutes Title 23, Section 212, Subsection J reads:

For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 United States Code section 1324b establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

Title 8, section 1324b of the United States Code relates to “Unfair immigration-related employment practices” and generally states that:

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

Committee Discussion Regarding Reference to Federal Law

This reference to federal law was taken up for discussion by the Committee at its first hearing on October 10, 2007. Richard Bark explained that the language, which is located Page 6, Lines 12-15 of the Conference Engrossed version of HB 2779, contains a technical error. The wrong reference to federal law is contained within the bill. The correct law citation is 8 U.S.C. Section 1324a (b). 8 U.S.C. Section 1324a (b) contains the language first put into place by the 1986 IRCA requiring the use of the I-9 form for employment verification. With the intended reference, employers would establish an affirmative defense that they did not intentionally or knowingly employ an unauthorized alien if they have, in good faith, complied with federal I-9 requirements.

Exemption for Critical Infrastructure

Current Law

The Legal Arizona Workers Act (Laws 2007, Ch. 27) provides no exception or definition for critical infrastructure.

Additionally, Title 41, Chapter 12, Article 7.1 outlines the Critical Infrastructure Information System under the Department of Public Safety. A.R.S. Title 41 Section 1801 defines *critical infrastructure* as “systems and assets, whether physical or virtual, that are so vital to this state and the United States that the incapacity or destruction of those systems and assets would have a debilitating impact on security, economic security, public health or safety.”

However, it should be noted that this definition applies only to statutes relating to the Critical Infrastructure Information System.

In 2002, the federal government passed the Critical Infrastructure Information Act, which created the Critical Infrastructure Protection Program. The term *critical infrastructure* was initially defined in the Critical Infrastructures Act of 2001. Codified as 42 U.S.C. 5195c, the act defined *critical infrastructure* as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.”

Committee Discussion Regarding Exemption for Critical Infrastructure

In the Governor’s letter from July 2, 2007 regarding the signing of HB 2779 into law, the Governor noted that the final version of HB 2779 “omits the license revocation exception for businesses servicing critical infrastructure.”

At the third meeting of the Committee, which took place on November 1, 2007, the issue of the impact of Laws 2001, Ch. 279 on “critical services” was raised.

In addition, committee member Pat Quinn raised a number of concerns as he saw the law potentially impacting Qwest Arizona, which can be considered as part of Arizona’s critical infrastructure. At the Committee’s second meeting, he raised the issues of enforcement and implementation. If his company was to hire a subcontractor to go dig a ditch in a non-descript location, and one of the subcontractor’s employees turns out to be an unauthorized alien, he believed that it is unclear at what would happen next. What is the offending location? What licenses would be suspended? Would this mean that Qwest would have to stop providing service, and if so, what lines would be shut down?

E-Verify Accuracy and Reliability

Current Statute

A.R.S. 23-214 requires that “after December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the basic pilot program.”

United States Citizenship and Immigration Services Information on E-Verify

According to the United States Citizenship and Immigration Services, they are implementing a new Photo Screening Tool into the E-Verify system as a form of biometric verification within the E-Verify system. This feature allows employers using the E-Verify system to check the photo on his or her new hire's Employment Authorization Document (EAD) or Permanent Resident Card ("Green Card") against DHS' immigration databases. However, it should be noted that this Tool does not currently have a means of checking Driver's License databases, which are the most common identifying documents used for obtaining employment.

According to USCIS, as of March 15, 2007, there were 352 employers using the E-Verify at a total of 1,264 sites. In December of 2006, Westat submitted their evaluation of the Basic Pilot Program to the Department of Homeland Security.

Committee Discussion Regarding E-Verify

At the second meeting of the Committee on October 24, 2007, the second item on the agenda was “Presentation about the E-Verify System. The presentation was given by Committee member Jolynn Clarke, Staffing Manager for the Salt River Project.

She explained that SRP opted to utilize the government's Employment Eligibility Verification program in May of 2006. At that time it was known as the Basic Pilot Program rather than E-Verify. She stated that she found the training to be easy and has experienced few problems with it. According to Ms. Clarke, SRP has processed 800-900 people and that problems with technical and accuracy issues, which were anticipated, did not occur. She acknowledged that there have been times that the E-Verify system was down or unavailable. Todd Sanders stated that the Greater Phoenix Chamber of Commerce has also signed up for E-Verify and is “generally happy with the results.” In addition, Randy Nye stated that Sundt Construction uses E-Verify and has had no difficulty with it.

In the discussion that followed, some committee members pointed out that the E-Verify System was susceptible to ID fraud. That is to say that if one were to steal the identity of another and use that information to create fraudulent identifying documents, then the E-Verify System would respond to the query with an employment eligibility authorization.

Definition of “License”

Current Statute

A.R.S. Title 23, Section 211, as added by HB2779 (Laws 2007, Ch. 279) Defined *license* as:

7. "License":

(a) Means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.

(b) Includes:

(i) Articles of incorporation under title 10.

(ii) A certificate of partnership, a partnership registration or articles of organization under title 29.

(iii) A grant of authority issued under title 10, chapter 15.

(iv) Any transaction privilege tax license.

(c) Does not include:

(i) Any license issued pursuant to title 45 or 49 or rules adopted pursuant to those titles.

(ii) Any professional license.

Committee Discussion Regarding Licenses

When the Committee met for a third time on November 1, 2007, one of the agenda items was “Discussion of Licenses as defined by HB2779 (Laws 2007, Ch. 279).” The agenda item was initially brought up at the previous meeting by committee member Sarah Strunk, especially in regards to the inclusion of Articles of Incorporation and similar organizational documents in the definition of *license*. Additionally, Speaker Weiers stated that he would also like to discuss the definition of “professional license.” On the November 1 meeting, this agenda item was primarily led by Ms. Strunk.

In regards to the inclusion of organizational documents in the definition of a “license,” Ms. Strunk stated that this stretches the common understanding of the term license. Organizational documents, she said, are never considered licenses by either business people or business lawyers. In addition, she indicated that current procedures and laws administered by the ACC do not contemplate this type of “suspension” of organizational documents. She expressed concern that leaving this definition as it currently stands would have unintended consequences, such as having Arizona corporations migrate to other states such as Delaware or Nevada to avoid the risk of losing their limited liability status. She said that the law does not prevent these entities from continuing to do

business in the state if they are organized in another state. Any entity that is raising capital by seeking investors would, she said, most likely be required to form outside of the state to avoid the risk of a passive investor losing their limited liability status as a shareholder, a risk no passive investor would tolerate if it could be avoided. Finally, Ms. Strunk indicated that in her opinion the inclusion of organizational documents will result in Arizona business law becoming irrelevant and result in a loss of revenue to the state for forming and maintaining such entities.

In regards to the professional licenses, Ms. Strunk stated that she felt the definition was “vague and unclear” and “difficult to understand what was meant.” She referenced “Title 32” and the array of jobs described within it. It should be noted that A.R.S. Title 32 contains both professions and occupations and does not contain a clear differentiation between the two.

Submissions/Proposals/Recommendations from Committee Members

Submission by Committee member Mitch Laird on 11/01/07 (12-pages)

Submission by Committee member Ed Cook on 11/30/07 (2-pages)

Submission by Committee member Mitch Laird on 12/07/07 (4-pages)

Submission by Committee member Mitch Laird on 12/07/07 (13-pages)

Proposed DRAFT Recommendations (10/31/2007)

Subcontractor/Contractor Concerns: Discussed October 24, 2007

23-211. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency, department, board or commission of this state or a county, city or town that issues a license for purposes of operating a business in this state.

2. "Basic pilot program" means the basic employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or its successor program.

3. "Employee" means any ~~person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.~~ **an INDIVIDUAL WHO PROVIDES SERVICES OR LABOR IN THIS STATE FOR AN EMPLOYER FOR WAGES OR OTHER REMUNERATION BUT DOES NOT MEAN INDEPENDENT CONTRACTORS AS DEFINED BY THIS SECTION.**

Mirrors federal definition and addresses the contractor/subcontractor issues discussed 10/24

4. "Employer" means any ~~individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons.~~ **PERSON OR ENTITY, INCLUDING AN AGENT OR ANYONE ACTING DIRECTLY OR INDIRECTLY IN THE INTEREST THEREOF, WHO ENGAGES THE SERVICES OR LABOR OF AN EMPLOYEE TO BE PERFORMED IN THIS STATE FOR WAGES OR OTHER REMUNERATION. IN THE CASE OF AN INDEPENDENT CONTRACTOR OR CONTRACT LABOR OR SERVICES, THE TERM EMPLOYER SHALL MEAN THE INDEPENDENT CONTRACTOR OR CONTRACTOR AND NOT THE PERSON OR ENTITY USING THE CONTRACT LABOR.**

Mirrors federal definition and addresses the contractor/subcontractor issues discussed 10/24

5. **"INDEPENDENT CONTRACTOR" MEANS ANY INDIVIDUAL OR ENTITY WHO CARRIES ON INDEPENDENT BUSINESS, CONTRACT TO DO A PIECE OF WORK ACCORDING TO THEIR OWN MEANS AND METHODS, AND ARE SUBJECT TO CONTROL ONLY AS TO RESULTS. WHETHER AN INDIVIDUAL OR ENTITY IS AN INDEPENDENT CONTRACTOR, REGARDLESS OF WHAT THE INDIVIDUAL OR ENTITY CALLS ITSELF, WILL BE DETERMINED ON A CASE-BY-CASE BASIS. FACTORS TO BE CONSIDERED IN THAT DETERMINATION INCLUDE, BUT ARE NOT LIMITED TO, WHETHER THE INDIVIDUAL OR ENTITY:**

Mirrors federal definition and addresses the contractor/subcontractor issues discussed 10/24.

Note: An independent contractor must demonstrate a high level of autonomy in order to meet this definition.

SUPPLIES THE TOOLS OR MATERIALS; MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC; WORKS FOR A NUMBER OF CLIENTS AT THE SAME TIME; HAS AN OPPORTUNITY FOR PROFIT OR LOSS AS A RESULT OF LABOR OR SERVICES PROVIDED; INVESTS IN THE FACILITIES FOR WORK; DIRECTS THE ORDER OR SEQUENCE IN WHICH THE WORK IS TO BE DONE AND DETERMINES THE HOURS DURING WHICH THE WORK IS TO BE DONE....

Definition of “Knowingly”: Discussed October 24, 2007

23-211. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency, department, board or commission of this state or a county, city or town that issues a license for purposes of operating a business in this state.

2. "Basic pilot program" means the basic employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or its successor program.

3. "Employee" means any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.

4. "Employer" means any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons.

5. "Intentionally" has the same meaning prescribed in section 13-105.

6. "Knowingly employ an unauthorized alien" means ~~the actions described in 8 united states code section 1324a. This term shall be interpreted consistently with 8 United States Code Section 1324a and any applicable federal rules and regulations.~~ TO HIRE, OR TO RECRUIT OR REFER FOR A FEE, FOR EMPLOYMENT IN THIS STATE A PERSON HAVING ACTUAL KNOWLEDGE THE PERSON IS AN UNAUTHORIZED ALIEN, AS DEFINED IN 8 UNITED STATES CODE SECTION 1324A (H)(3), WITH RESPECT TO SUCH EMPLOYMENT. A LICENSE HOLDER SHALL NOT BE HELD LIABLE FOR THE ACTIONS OF AN EMPLOYEE TO HIRE AN UNAUTHORIZED ALIEN, EXCEPT THAT THE COUNTY ATTORNEY MAY FILE AN ACTION AGAINST THE LICENSE HOLDER IF IT IS DETERMINED THAT THE EMPLOYER HAS ENGAGED IN A PATTERN OR PRACTICE OF HIRING UNAUTHORIZED WORKERS.

7. 8. "License":

(a) Means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.

Clarifies the “knowingly” definition to require actual knowledge. Reflects the general and stated intent of legislators who voted in support of HB2779. Discussed 10/24

Protects a business owner from the illegal acts of an employee, and provides the county attorney with tools to prosecute business owners who attempt to use employees to disguise their pattern or practice of illegal hiring. Discussed 10/24

(b) Includes:

(i) Articles of incorporation under title 10.

(ii) A certificate of partnership, a partnership registration or articles of organization under title 29.

(iii) A grant of authority issued under title 10, chapter 15.

(iv) Any transaction privilege tax license.

(c) Does not include:

(i) Any license issued pursuant to title 45 or 49 or rules adopted pursuant to those titles.

(ii) Any professional license.

9. "LICENSE HOLDER" MEANS AN INDIVIDUAL OR CORPORATION THAT MAINTAINS LICENSES NECESSARY TO OPERATE A BUSINESS IN THIS STATE.

Definition necessary to implement "knowingly" changes. Discussed 10/24

10. "PATTERN OR PRACTICE" MEANS REGULAR, REPEATED, AND INTENTIONAL ACTIVITIES, BUT DOES NOT INCLUDE ISOLATED, SPORADIC, OR ACCIDENTAL ACTS.

Definition necessary to implement "knowingly" changes. Discussed 10/24

8. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code section 1324a(h)(3).

License Definitions: Discussed October 24, 2007

23-211. Definitions ...

7. "License":

~~(a) M~~ means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.

~~(b) Includes:~~

~~(i) Articles of incorporation under title 10.~~

~~(ii) A certificate of partnership, a partnership registration or articles of organization under title 29.~~

~~(iii) A grant of authority issued under title 10, chapter 15.~~

~~(iv) Any transaction privilege tax license.~~

~~(e) (b) Does not include:~~

~~(i) Any license issued pursuant to title 45 or 49 or rules adopted pursuant to those titles.~~

~~(ii) Any professional license...~~

Clarifies the definition of "license" consistent with other ARS references and the commonly understood definition. Raised 10/24

"Professional license" is vague and undefined. Striking this term will provide parity among employers. Raised 10/24

Complaints Process Clarifications: Discussed October 24, 2007

23-212. Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

B. On receipt of a SIGNED WRITTEN COMPLAINT that an employer allegedly intentionally employs an unauthorized alien or ALLEGEDLY knowingly employs an unauthorized alien, the attorney general or county attorney shall ~~investigate whether the employer has violated subsection A.~~ DETERMINE WHETHER THE COMPLAINT IS VALID AND THAT IT IS NOT BASED ON NATIONAL ORIGIN, ETHNICITY OR RACE. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE A COMPLAINT THAT IS BASED ON NATIONAL ORIGIN, ETHNICITY OR RACE. THE COMPLAINT SHALL INDICATE THE NAME OF THE WITNESS TO THE ALLEGED VIOLATION, THE NAME OF THE BUSINESS ENTITY THAT ALLEGEDLY VIOLATED THIS SECTION, THE SPECIFIC ACTIONS THAT CONSTITUTE THE ALLEGED VIOLATION AND THE DATE AND LOCATION OF THE ALLEGED VIOLATION. HAVING DETERMINED THE COMPLAINT TO BE VALID, THE COUNTY ATTORNEY OR ATTORNEY GENERAL SHALL INVESTIGATE WHETHER THE EMPLOYER INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN. A PERSON WHO KNOWINGLY FILES A FALSE OR FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

Eliminates the threat of anonymous complaints, clarifies that complaints shall not be based on race or ethnicity, and requires a complaint to be signed and written for the purposes of following up on false or frivolous complaints. Mirrors the complaints language included in HB2577 (vetoed, 2006). Discussed 10/24

Increases the penalty for false or frivolous complaints to mirror existing violations for providing false information to law enforcement. Discussed 10/24

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not 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 if the complaint was originally filed with the attorney general....

Criminal Standard of Proof: Discussed October 24, 2007

23-212. Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

D. An action for a violation of subsection A shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is employed AND THE COUNTY ATTORNEY SHALL ESTABLISH BEYOND A REASONABLE DOUBT THAT AN EMPLOYER HAS INTENTIONALLY EMPLOYED AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOYED AN UNAUTHORIZED ALIEN. The county attorney shall not bring an action against any employer for any violation of subsection A that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is employed by the employer after an action has been brought for a violation of 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....

Increases the standard of proof consistent with the standard of proof necessary to prosecute a false or frivolous complaint. Discussed 10/24

Multiple Locations/License Suspensions: Discussed October 24, 2007

23-212. Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

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

1. For a first violation during a three year period that is a knowing violation of subsection A, 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. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer at the specific 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 and that the employer will not intentionally or knowingly employ an unauthorized alien. 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 and that are ~~necessary to operate~~ SPECIFIC TO THE OPERATION OF the employer's business at the employer's business location where the unauthorized alien PRIMARILY performed work. If a license is not necessary to operate the employer's business at the specific 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.

Clarifies policies relating to the revocation/suspension of licenses of a specific location. Discussed 10/10

Note: The committee voiced concerns and discussed the provision re: the suspension of licenses when there is not a specific license necessary for the operation of that location, but did not reach consensus on a solution.

(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 first violation during a five year period that is an intentional violation of subsection A, 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. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer at the specific 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 and that the employer will not intentionally or knowingly employ an unauthorized alien. All licenses that are suspended under this subdivision 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 and that are ~~necessary to operate~~ SPECIFIC TO THE OPERATION OF the employer's business at the employer's business location where the unauthorized alien PRIMARILY performed work. If a license is not necessary to operate the employer's business at the specific 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.

Clarifies policies relating to the revocation/suspension of licenses from a specific location. Discussed 10/10

3. For a second violation of subsection A during the period of probation, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer and that are ~~necessary to operate~~ SPECIFIC TO THE OPERATION OF the employer's business at the employer's business location where the unauthorized alien PRIMARILY performed work. If a license is not necessary to operate the employer's business at the specific 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.

Clarifies policies relating to the revocation/suspension of licenses from a specific location. Discussed 10/10

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F and shall maintain a database of the employers who have a first violation of subsection A 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 basic pilot program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

Incomplete U.S.C. Reference: Discussed October 10, 2007

Approved October 10, 2007

23-212. Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

J. For the purposes of this section, an employer who 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 or knowingly employ an unauthorized alien.

The proper reference is 8 United States Code 1324a(b). Discussed and Approved 10/10
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Comments submitted by committee member Edwin (Ed) Cook:

It has been a privilege to serve with the other members of the Ad Hoc Committee on Business Owners and Work Site Enforcement. I have benefited from the great insight of my fellow members into the variety of perceptions, issues and challenges created by Laws 2007, Chapter 279. I feel that it is appropriate to reiterate some of the things that I have said in committee, and to share a few additional thoughts with my fellow members. Thus, I respectfully submit the following comments.

I serve as the Executive Director of the Arizona Prosecuting Attorneys' Advisory Council (APAAC), a 22-member statutorily-created body. Council membership includes the fifteen (15) elected County attorneys and the Attorney General, each with an independent office. APAAC works mostly through general consensus of its members. Although there are obvious shared views among prosecutors, diversity exists, including honest differences in philosophy and policy. Nonetheless, all prosecutors must act within the confines of the same high legal and ethical standards applicable to prosecutors.

When Chapter 279 was signed into law, APAAC appointed an Advisory Committee to critically assess the law, work to identify a process to fulfill the legislative intent through a fair and impartial application of law and to identify any changes that might be needed to implement the legislative intent. Concurrent with this effort, several working groups were formed to explore the many facets of the legislation. It is the goal of the members of the Council to fairly and impartially apply the law that the legislature has enacted. The specific approach in each county may differ, but the goal is the same. There is nothing "bad" about differing approaches; they simply reflect application of professional discretion in the performance of the public duty.

During our second meeting of the Ad Hoc Committee, I shared with members of the committee the contents of what I anticipated would comprise the initial complaint form used by most, but not all Arizona County Attorney Offices. I noted that there appeared to be a general consensus amongst 14 of the County Attorney Offices, and that I was unfamiliar with the approach of the Maricopa County Attorney's Office (MCAO) as MCAO was pursuing its own approach to policy and procedure in implementing the law. I further noted that discussions amongst County Attorney Offices continue, and that there still may be some modification as those discussions progress.

During the same meeting, I also discussed my reading of the impact of the statute in using the definition of "knowingly employ an illegal alien" referenced in federal law. I felt that the practical impact of the reference would still result in an "actual" knowledge standard. I opined that the reference to constructive knowledge and examples in CFR indicated that evidence of constructive notice could circumstantially establish an actual notice, but the examples did not reflect

true “constructive knowledge.” The view that enforcement of a violation is site specific adds credence to this view, as do recent private discussions that I have had with federal authorities. Nonetheless, I understand and respect the concerns expressed by my fellow committee members, and believe that my view remains contrary to that of corporate counsel.

Is it appropriate for the policies and procedures to differ amongst various County Attorneys? As an elected official, each County Attorney has the prerogative to pursue the policies and procedures deemed appropriate by that County Attorney. At any given time, an office will face priorities and issues that differ from another office. This is a natural and expected result from the nature and scope of a law enforcement issue or problem, the availability of resources, and the need to provide a community with the level of service that the community supports.

I understand and respect the concern voiced by members of the business community regarding different aspects of the law. I do not suggest that differing views denote I am “right” and they are “wrong,” I simply do not share their concerns to the same degree. An example of this lies in the initial complaint process. There was considerable concern expressed about what form a “complaint” (from the public) would take that would initiate an investigation. Would a complaint be sworn in person or could it be anonymous? Regardless of any difference in the processing of initial complaints amongst County Attorney Offices, the statute establishes legal parameters as to what a valid complaint will entail. While a standardized approach may be preferable in the eyes of many, I believe that it would be a mistake to try and further define legislatively the form of the initial complaint. That removal of discretion from a prosecutor is a far greater problem for the community, in effect elevating form over substance. I would defer to each office to perform its legal and ethical obligations within the current parameters of the statute. I believe that each office will take steps to insure integrity of an initial complaint before undertaking any action based on it.

As to the overall law on worksite enforcement, I believe that the County Attorneys desire to work with the business community to ensure compliance, rather than penalize businesses for mistakes or accidents. The goal of the prosecutor is to deal with the “bad actors” while not hurting innocent, legitimate business. I believe that the process in each county will reflect this approach.

If the Ad Hoc Committee is asked to vote on any proposed legislative changes, I will respectfully abstain from that process and request that my abstention be noted.

December 7, 2007

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
Capitol Complex
1700 W. Washington
Phoenix, AZ 85007-2890

Re: Ad Hoc Committee on Business Owners
and Work Site Enforcement

Dear Honorable Speaker Weiers:

I would once again like to thank you for allowing me to serve the State of Arizona in this unique way on the critical issue of immigration. It is important that readers of this report understand the scope of the Committee's discussion. In your opening remarks, you made it clear that you believed that HB 2779 was a "good law" and went on to state that:

"What I am asking from [the Committee] is not whether we should have [enacted HB 2779] or whether we had the right, but rather, what can the Legislature do now to further help protect you and all the honest business owners of Arizona while maintaining the integrity of the law."

The committee honored your request at the meetings and attempted to suggest what changes it could while refraining from discussing the larger issue of whether HB 2779 was a good law for Arizona. While I believe many of the comments and proposed changes would mitigate the harm that will be created by HB 2779, none of them completely change the fact that HB 2779 is bad for Arizona. My concern is that readers of the report, not understanding the limitation of areas of discussion or understanding that no votes on specific language were permitted after the first meeting, will come to the false conclusion that members of the committee only objected to those aspects of HB 2779 that appeared on the agenda or could only come to consensus on the issues discussed at the first meeting. In case the committee is given the chance to vote on specific language changes, I am submitting via a separate cover letter some additional recommended language changes to HB 2779.

As expressed by my fellow Burger King franchisees and I, there are some serious concerns regarding HB 2779, many of which we stated in our October 31, 2007 letter to you. As a result of HB 2779, honest business owners can lose their businesses for acts that they not only did not commit, but that they knew nothing about. In many industries,

the business owner simply cannot be responsible for hiring all employees. The owner must rely on managers. A manager can, without the knowledge or approval of the company and in direct defiance of company policy, hire an unauthorized alien. He might do this intentionally, in which case the business will be deemed to have intentionally hired an unauthorized alien. This situation is particularly disturbing for business owners and the legal workers they employ because there is no way for the business owner to know when the business is violating the law. The business owner cannot see inside the manager's head to find out what the manager knows; however, that manager's knowledge will be imputed to the business if charges are pressed.

You acknowledged that this was the case at the second meeting but stated that there are other circumstances where an employer is liable for the actions of its employees, for example, when an employee negligently injures someone on the job. While it is true that the employer pays for the employee's negligence, there are several critical distinctions between the two situations. First, in a negligence lawsuit, the amount the employer pays is related to the damages inflicted. That is not the case with HB 2779. Second, an employer can purchase insurance to protect itself from negligence lawsuits, but no insurance can give the employer its licenses back. Third, in the case of the negligence lawsuit, there is a specific person who has suffered an injury who receives compensation. With HB 2779, no one benefits. The business owner loses his business, the legal employees lose their jobs, and the state loses tax revenue. Finally, the employee who injures another person negligently shares responsibility and can be sued by either the injured party or by the employer. Under HB 2779, the employee suffers no consequences.

Furthermore, even the manager may not have any idea that the employee is unauthorized. However, if he fails to complete or improperly completes the Form I-9, that incomplete Form I-9 could be the basis for revocation of the business' licenses. HB 2779 incorporates Federal law in its definition of "knowledge" and Federal law is clear that knowledge can include "constructive knowledge" which can include an incomplete Form I-9. Even Mr. Cook, who asserted that most counties would require an actual knowledge standard, admitted that evidence of constructive knowledge could be used to prove actual knowledge.

HB 2779 imposes penalties that are both devastating and very poorly targeted. For a second violation within the probationary periods, there is only one penalty - the death penalty for the business. The second violation and permanent revocation of the business' licenses could result from a single unauthorized worker out of hundreds. This would mean that the business owner would lose the business and hundreds of legal Arizona workers would lose their jobs. In addition, if the business that is shut down is a critical supplier or purchaser in its industry, many other innocent businesses that are dependant upon that supplier or purchaser will be hurt or perhaps driven out of business, resulting in more lost jobs.

On the other hand, the most egregious offenders, those who are willing to pay employees “under the table,” can avoid the law entirely simply by operating their business without an Arizona license. Not only do they face no punishment, but they have not even committed a violation because they do not meet HB 2779’s definition of “employer”.

It is my firm belief that the risks that honest business owners face under HB 2779 will have a chilling effect on business investment in Arizona. It is well known that there is a substantial population of unauthorized aliens in Arizona. So, why should an investor risk its entire business investment over two minor infractions of HB 2779 when it can invest in another state and completely avoid that risk?

There are many other serious issues regarding HB 2779 that the committee did not have time to address:

Retroactive effect. Business owners are clearly liable for employees *hired* prior to January 1, 2008 if those employees are employed on or after January 1, 2008. However, business owners may not use E-Verify or ask for additional documentation to verify work status of those employees because such actions are prohibited by Federal regulations.

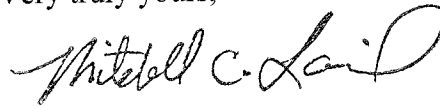
Rebuttable presumption. HB 2779 provides a rebuttable presumption that the employer did not violate HB 2779 if the employer checks the employee through the E-Verify and receives a “tentative confirmation”. As a benefit to the employer, this rebuttable presumption is totally illusory. A defendant in this type of proceeding will always have a rebuttable presumption of innocence without having to take any special action to establish that presumption. Once the state brings any evidence whatsoever on the point, the presumption granted in HB 2779 has been rebutted and it disappears entirely. From that point, the only thing that matters is whether the state meets its burden of proof, which is only a preponderance of the evidence. I believe that getting a tentative confirmation from the Federal government, which is the best that an employer can possibly receive with the tools provided, ought to completely protect a business owner from prosecution.

Due Process. The committee did not address the fact that HB 2779 does not provide any mechanism for the employer to address the foundational point of whether the employee is actually unauthorized to work in the United States. A.R.S. §23-212(H) provides that “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).” Results of a request for information pursuant to 8 USC §1373(c) are not a final determination and should not be treated as such, especially when the punishment is so severe. Under federal law, the employer can request a hearing and present evidence on whether the employee is an unauthorized alien.

While I am sympathetic with the legislature's frustration with the federal government's failure to act meaningfully on immigration, the fact remains that immigration is and should remain a federal issue. Employers should not be faced with a checkerboard of conflicting rules and regulations on this already complicated issue. Furthermore, even the most liberal reading of the federal immigration laws leaves states with very little room to maneuver. As you know, states cannot constitutionally levy fines or impose criminal penalties in this area. Such sanctions would make it possible to have the punishment fit the crime. I believe that HB 2779 is unconstitutional even though it avoids those obvious traps. However, in its attempt to avoid preemption, the legislature has passed a law where the punishment bears almost no relation to the crime.

For the reasons given herein and at the meetings, I believe that HB 2779 is potentially disastrous to honest businesses in Arizona, which will result in lost jobs for thousands of legal workers in Arizona, along with a loss in tax revenue for the state.

Very truly yours,

A handwritten signature in black ink that reads "Mitchell C. Laird". The signature is written in a cursive style with a large, stylized "L" at the end.

Mitchell C. Laird

December 7, 2007

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
Capitol Complex
1700 W. Washington
Phoenix, AZ 85007-2890

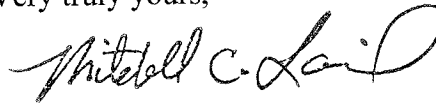
Re: Ad Hoc Committee on Business Owners
and Work Site Enforcement

Dear Honorable Speaker Weiers:

As you know at the committee meetings, I submitted several suggested language changes designed to address some of the committee's concerns regarding HB2779. I am enclosing some additional suggested language changes to HB 2779, along with some of the changes I already submitted. To the extent that the language I previously submitted is inconsistent with the language recommendations enclosed with this letter, I would like the language enclosed herein to take precedence as I have, with some small changes, improved the recommended changes.

Thank you for your consideration in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Mitchell C. Laird". The signature is written in a cursive style with a large, looped "L" at the end.

Mitchell C. Laird

Encls.

State of Arizona

House of Representatives

Forty-eighth Legislature

First Regular Session

2007

HOUSE BILL 2779

AN ACT

amending section 13-2009, Arizona Revised Statutes; Amending Title 23, chapter 2, Arizona Revised Statutes, by adding article 2; making appropriations; relating to EMPLOYMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-2009, Arizona Revised Statutes, is amended to read:

13-2009. Aggravated taking identity of another person or entity; classification

A. A person commits aggravated taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of either:

1. Three or more other persons or entities, including real or fictitious persons or entities, without the consent of the other persons or entities, with the intent to obtain or use the other persons' or entities' identities for any unlawful purpose or to cause loss to the persons or entities whether or not the persons or entities actually suffer any economic loss.

2. Another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose and causes another person or entity to suffer an economic loss of three thousand dollars or more.

3. Another person, including a real or fictitious person, with the intent to obtain employment.

B. In an action for aggravated taking the identity of another person or entity under subsection A, paragraph 1 of this section, proof of possession out of the regular course of business of the personal identifying information or entity identifying information of three or more other persons or entities may give rise to an inference that the personal identifying information or entity identifying information of the three or more other persons or entities was possessed for an unlawful purpose.

C. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

D. Aggravated taking the identity of another person or entity is a class 3 felony.

Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS

23-211. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency, department, board or commission of this state or a county, city or town that issues a license for purposes of operating a business in this state.

2. "Basic pilot program" means the basic employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or its successor program.

3. "Employee" means any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer. **an INDIVIDUAL WHO PROVIDES SERVICES OR LABOR IN THIS STATE FOR AN EMPLOYER FOR WAGES OR OTHER REMUNERATION BUT DOES NOT MEAN INDEPENDENT CONTRACTORS AS DEFINED BY THIS SECTION.**

4. "Employer" means any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons. **IN THE CASE OF AN INDEPENDENT CONTRACTOR OR CONTRACT LABOR OR SERVICES, THE TERM EMPLOYER SHALL MEAN THE INDEPENDENT CONTRACTOR OR CONTRACTOR AND NOT THE PERSON OR ENTITY USING THE CONTRACT LABOR.**

5. **"INDEPENDENT CONTRACTOR" MEANS ANY INDIVIDUAL OR ENTITY WHO CARRIES ON INDEPENDENT BUSINESS, CONTRACT TO DO A PIECE OF WORK ACCORDING TO THEIR OWN MEANS AND METHODS, AND ARE SUBJECT TO CONTROL ONLY AS TO RESULTS. WHETHER AN INDIVIDUAL OR ENTITY IS AN INDEPENDENT CONTRACTOR, REGARDLESS OF WHAT THE INDIVIDUAL OR ENTITY CALLS ITSELF, WILL BE DETERMINED ON A CASE-BY-CASE BASIS. FACTORS TO BE CONSIDERED IN THAT DETERMINATION INCLUDE, BUT ARE NOT LIMITED TO, WHETHER THE INDIVIDUAL OR ENTITY: SUPPLIES THE TOOLS OR MATERIALS; MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC; WORKS FOR A NUMBER OF CLIENTS AT THE SAME TIME; HAS AN OPPORTUNITY FOR PROFIT OR LOSS AS A RESULT OF THE LABOR OR SERVICES PROVIDED; INVESTS IN THE FACILITIES FOR WORK; DIRECT THE ORDER OR SEQUENCE IN WHICH THE WORK IS TO BE DONE AND DETERMINES THE HOURS DURING WHICH THE WORK IS TO BE DONE.**

5-6. "Intentionally" has the same meaning prescribed in section 13-105.

6-7. "Knowingly employ an unauthorized alien" means ~~the actions described in 8 united states code section 1324a. This term shall be interpreted consistently with 8 United States Code Section 1324a and any applicable federal rules and regulations.~~ **TO HIRE, OR TO RECRUIT OR REFER FOR A FEE, FOR EMPLOYMENT IN THIS STATE A PERSON HAVING ACTUAL KNOWLEDGE THE PERSON IS AN UNAUTHORIZED ALIEN, AS DEFINED IN 8 UNITED STATES CODE SECTION 1324A (H)(3), WITH RESPECT TO SUCH EMPLOYMENT. AN EMPLOYER SHALL NOT BE HELD LIABLE FOR THE ACTIONS OF AN EMPLOYEE TO HIRE AN UNAUTHORIZED ALIEN, EXCEPT THAT THE COUNTY ATTORNEY**

Submitted 11/1/07. Changes to definitions of employee, employer and addition of definition of "independent contractor" address the fact that contractors and others do not have the ability to confirm the employment eligibility of subcontractors' employees. The definition of "employer" has been changed from the 11/1/07 to keep it as it is in HB 2779 with the exception of adding language that ties into the independent contractor issue.

Similar language was submitted 11/1/07. This version simplifies the language, eliminating the added term "License Holder". These changes reflect the belief that the penalties of HB 2779 are too severe to impose on an entity absent a showing of actual knowledge or a "pattern or practice" of violations.

MAY FILE AN ACTION AGAINST THE EMPLOYER IF IT IS DETERMINED THAT THE EMPLOYER HAS ENGAGED IN A PATTERN OR PRACTICE OF HIRING UNAUTHORIZED WORKERS.

7-8. "License":

(a) ~~M~~ means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.

(b) ~~Includes:~~

(i) ~~Articles of incorporation under title 10.~~

(ii) ~~A certificate of partnership, a partnership registration or articles of organization under title 29.~~

(iii) ~~A grant of authority issued under title 10, chapter 15.~~

(iv) ~~Any transaction privilege tax license.~~

(e) ~~D~~ License does not include:

(i) ~~A~~ license issued pursuant to title 45 or 49 or rules adopted pursuant to those titles.

(ii) ~~Any professional license.~~

9. "PATTERN OR PRACTICE" MEANS REGULAR, REPEATED, AND INTENTIONAL ACTIVITIES, BUT DOES NOT INCLUDE ISOLATED, SPORADIC, OR ACCIDENTAL ACTS.

8-10. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code section 1324a(h)(3).

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

A. An employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien IN THIS STATE.

B. On receipt of a SIGNED, WRITTEN complaint that an employer allegedly intentionally employs an unauthorized alien or ALLEGEDLY knowingly employs an unauthorized alien, the attorney general or county attorney shall DETERMINE WHETHER THE COMPLAINT IS VALID AND THAT IT IS NOT BASED ON NATIONAL ORIGIN, ETHNICITY OR RACE. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT INVESTIGATE A COMPLAINT THAT IS BASED ON NATIONAL ORIGIN, ETHNICITY OR RACE. THE COMPLAINT SHALL INDICATE THE NAME OF THE WITNESS TO THE ALLEGED VIOLATION, THE NAME OF THE BUSINESS ENTITY THAT ALLEGEDLY VIOLATED THIS SECTION, THE SPECIFIC ACTIONS THAT CONSTITUTE THE ALLEGED VIOLATION AND THE DATE AND LOCATION OF THE ALLEGED VIOLATION. HAVING DETERMINED THE COMPLAINT TO BE VALID, THE COUNTY ATTORNEY OR

Submitted 11/1/07. Clarifies the definition of "license" consistent with other ARS references and the commonly understood definition.

Submitted 11/1/07. Added to implement revised definition of "knowingly employ an unauthorized alien"

Clarifies that this statute does not apply outside Arizona.

Submitted 11/1/07. Eliminates the threat of anonymous complaints, clarifies that complaints shall not be based on race or ethnicity, provides basis for pursuing persons who make frivolous complaints and uniform application throughout the state. Mirrors the complaint language in HB 2577 (vetoed, 2006).

ATTORNEY GENERAL SHALL INVESTIGATE WHETHER THE EMPLOYER INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN. ~~investigate whether the employer has violated subsection A. 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(e). A person who knowingly files a false and or frivolous complaint under this subsection is guilty of a class 3-1 misdemeanor.~~

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not 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 if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection A shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is employed AND THE COUNTY ATTORNEY SHALL ESTABLISH BEYOND A REASONABLE DOUBT THAT AN EMPLOYER HAS INTENTIONALLY EMPLOYED AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOYED AN UNAUTHORIZED ALIEN. The county attorney shall not bring an action against any employer for any violation of subsection A that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is employed HIRED by the employer after an action has been brought for a violation of 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:

1. For a first violation during a three year period that is a knowing violation of subsection A, 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. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer at the specific location where the unauthorized alien performed work.

Submitted 11/1/07.
Increases the penalty for false or frivolous complaints to mirror existing violations for providing false information to law enforcement.

Language raising standard of proof to level required to prove false or frivolous complaint submitted 11/1/07.

Requires second violation to be based on an unauthorized alien who is hired after first charges have been brought. Under federal law, employers only have ability to use E-Verify and other verification techniques at time of hire.

(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, TO AFFIANT'S ACTUAL KNOWLEDGE, the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. 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 and that ~~are necessary to operate~~ ARE SPECIFIC TO THE OPERATION OF the employer's business at the employer's business location where the unauthorized alien PRIMARILY performed work. If a ~~NO license is not necessary to operate~~ IS SPECIFIC TO the employer's business at the specific location where the unauthorized alien PRIMARILY 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; PROVIDED, HOWEVER, THAT THE COURT SHALL NOT ORDER THE SUSPENSION OF MORE LICENSES THAN ARE NECESSARY TO SUSPEND OPERATION OF EMPLOYER'S BUSINESS AT THE LOCATION WHERE THE UNAUTHORIZED ALIEN PRIMARILY PERFORMED WORK AND, TO THE EXTENT POSSIBLE, THE COURT SHALL SUSPEND EMPLOYER'S GENERAL BUSINESS LICENSES ONLY WITH RESPECT TO THE EMPLOYER'S BUSINESS AT THE LOCATION WHERE THE UNAUTHORIZED ALIEN PRIMARILY PERFORMED WORK. 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.

(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:

A person can only testify to what they know.

Clarifies that only the site where the violation occurred will be subject to suspension whenever possible. Changes in first sentence submitted 11/1/07.

Changes beginning "If NO license..." were discussed 11/1/07, but no specific language was proposed.

Changes beginning "provided, however..." are added here to further clarify the intent to impact only the location in violation of the law.

- (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 first violation during a five year period that is an intentional violation of subsection A, 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. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer at the specific 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, TO AFFIANT'S ACTUAL KNOWLEDGE, the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. All licenses that are suspended under this subdivision 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

A person can only testify to what they know.
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subdivision are all licenses that are held by the employer and that are ~~necessary to operate~~ ARE SPECIFIC TO THE OPERATION OF the employer's business at the employer's business location where the unauthorized alien PRIMARILY performed work. If a NO license is ~~not necessary to operate~~ IS SPECIFIC TO the employer's business at the specific location where the unauthorized alien PRIMARILY 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; PROVIDED, HOWEVER, THAT THE COURT SHALL NOT ORDER THE SUSPENSION OF MORE LICENSES THAN ARE NECESSARY TO SUSPEND OPERATION OF EMPLOYER'S BUSINESS AT THE LOCATION WHERE THE UNAUTHORIZED ALIEN PRIMARILY PERFORMED WORK AND, TO THE EXTENT POSSIBLE, THE COURT SHALL SUSPEND EMPLOYER'S GENERAL BUSINESS LICENSES ONLY WITH RESPECT TO THE EMPLOYER'S BUSINESS AT THE LOCATION WHERE THE UNAUTHORIZED ALIEN PRIMARILY PERFORMED WORK. 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.

3. For a second violation of subsection A during the period of probation, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer and that ~~are necessary to operate~~ ARE SPECIFIC TO THE OPERATION OF the employer's business at the employer's business location where the unauthorized alien PRIMARILY performed work. If a NO license is ~~not necessary to operate~~ IS SPECIFIC TO the employer's business at the specific location where the unauthorized alien PRIMARILY 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; PROVIDED, HOWEVER, THAT THE COURT SHALL NOT ORDER THE REVOCATION OF MORE LICENSES THAN ARE NECESSARY TO CEASE OPERATION OF EMPLOYER'S BUSINESS AT THE LOCATION WHERE THE UNAUTHORIZED ALIEN PRIMARILY PERFORMED WORK AND, TO THE EXTENT POSSIBLE, THE COURT SHALL REVOKE EMPLOYER'S GENERAL BUSINESS LICENSES ONLY WITH RESPECT TO THE EMPLOYER'S BUSINESS AT THE LOCATION WHERE THE UNAUTHORIZED ALIEN PRIMARILY PERFORMED WORK. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

Clarifies that only the site where the violation occurred will be subject to suspension whenever possible. Changes in first sentence submitted 11/1/07.

Changes beginning "If NO license..." were discussed 11/1/07, but no specific language was proposed.

Changes beginning "provided, however ..." are added to further clarify the intent to impact only the location in violation of the law

Clarifies that only the site where the violation occurred will be subject to suspension whenever possible. Changes in first sentence submitted 11/1/07.

Changes beginning "If NO license..." were discussed 11/1/07, but no specific language was proposed.

Changes beginning "provided, however ..." are added to further clarify the intent to impact only the location in violation of the law.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F and shall maintain a database of the employers who have a first violation of subsection A 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 basic pilot program OR AS OTHERWISE PROVIDED UNDER 8 UNITED STATES CODE SECTION 1324a(b) creates a NON-rebuttable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

J. For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 United States Code section 1324ba establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

23-213. Employer actions; federal or state law compliance

This article shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.

23-214. Verification of employment eligibility; basic pilot program

After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the basic pilot program.

Sec. 3. Employer notice

On or before October 1, 2007, the department of revenue shall provide a notice to every employer that is required to withhold tax pursuant to title 43, chapter 4, Arizona Revised Statutes. The notice shall explain the requirements of title 23, chapter 2, article 2, Arizona Revised Statutes, as added by this act, including the following:

1. A new state law prohibits employers from intentionally employing an unauthorized alien or knowingly employing an unauthorized alien.

2. For a first violation of this new state law during a three year period that is a knowing violation, the court will order the appropriate licensing agencies to suspend all licenses held by the employer unless the employer files a signed sworn affidavit with the county attorney within three business days. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license that is suspended will remain suspended

If an employer checks the employee through E-Verify and gets a confirmation of eligibility or follows federal requirements to the letter of the law, that should be all that is required and they should have a true "safe harbor."

Revision to technical error approved at first meeting.

until the employer files a signed sworn affidavit with the county attorney. A copy of the court order will be made available on the attorney general's website.

3. For a first violation of this new state law during a five year period that is an intentional violation, the court will order the appropriate licensing agencies to suspend all licenses held by the employer for a minimum of ten days. The employer must file a signed sworn affidavit with the county attorney. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license that is suspended will remain suspended until the employer files a signed sworn affidavit with the county attorney. A copy of the court order will be made available on the attorney general's website.

4. For a second violation of this new state law, the court will order the appropriate licensing agencies to permanently revoke all licenses that are held by the employer.

5. Proof of verifying the employment authorization of an employee through the basic pilot program, as defined in section 23-211, Arizona Revised Statutes, as added by this act, will create a rebuttable presumption that an employer did not violate the new state law.

6. After December 31, 2007, every employer, after hiring an employee, is required to verify the employment eligibility of the employee through the basic pilot program, as defined in section 23-211, Arizona Revised Statutes, as added by this act.

7. Instructions for the employer on how to enroll in the basic pilot program, as defined in section 23-211, Arizona Revised Statutes, as added by this act.

Sec. 4. Employer sanctions legislative study committee

A. The employer sanctions legislative study committee is established consisting of the following members:

1. Three members of the senate who are appointed by the president of the senate, not more than two of whom shall be members of the same political party. The president of the senate shall designate one of these members to co-chair the committee.

2. Three members of the house of representatives who are appointed by the speaker of the house of representatives, not more than two of whom shall be members of the same political party. The speaker of the house of representatives shall designate one of these members to co-chair the committee.

3. A citizen of Arizona appointed by the president of the senate who owns a business in Arizona with no more than 30 employees.

4. A citizen of Arizona appointed by the speaker of the house of representatives who owns a business in Arizona with more than 30 employees.

B. The Committee shall:

1. Examine the laws and regulations pertaining to employers sanctions in Arizona.
 2. Examine the effects of these laws and whether such laws are being properly implemented.
 3. Examine if these laws are being applied to all businesses in Arizona in a fair manner.
 4. Examine if the complaint process is being implemented in a fair and just manner.
 5. Submit a report of its findings and recommendations to the governor, the president of the senate and speaker of the house of representatives on or before December 31, 2008 and submit a copy of its report to the secretary of state and the director of the Arizona state, library archives and public records.
- C. Committee members are not eligible to receive compensation or reimbursement of expenses.

Sec. 5. Severability

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

Sec. 6. Short title

This act shall be known as and may be cited as the "Legal Arizona Workers Act."

Sec. 7. Appropriation; attorney general enforcement; exemption

A. The sum of \$100,000 is appropriated from the state general fund in fiscal year 2007-2008 to the attorney general for the purpose of enforcing any immigration related matters and section 23-212, Arizona Revised Statutes, as added by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 8. Appropriation; county attorney enforcement; department of revenue; employer notice; exemption

A. The sum of \$2,430,000 is appropriated from the state general fund in fiscal year 2007-2008 to the department of administration to be distributed to the county attorneys in this state for the purpose of enforcing any immigration related matters and section 23-212, Arizona Revised Statutes, as added by this act. The department of administration shall distribute these monies to each county attorney as follows:

1. \$1,430,000 to each county attorney of a county in this state having a population of one million five hundred thousand or more persons.

2. \$500,000 to each county attorney of a county in this state having a population of eight hundred thousand or more persons but less than one million five hundred thousand persons.

3. The remainder of monies to be distributed as equally as possible to each county attorney of counties in this state having a population of less than five hundred thousand persons.

B. The sum of \$70,000 is appropriated from the state general fund in fiscal year 2007-2008 to the department of revenue for the purposes prescribed in section 3 of this act.

C. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 9. Delayed repeal

Section 4 as added by this act is repealed from and after January 1, 2009.

Attachments

Letter from Speaker Weiers requesting members to serve on the Committee

Conference Engrossed Version of HB 2577 (2006)

Governor's Veto Letter for HB 2577 (2006)

Conference Engrossed Version of HB 2779 (Laws 2007, Ch. 279)

Governor's Letter Regarding HB 2779 (Laws 2007, Ch. 279)

Revised I-9 Form

Agendas and Minutes of the Committee Meetings

SPEAKER JAMES P. WEIERS
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844

PHONE: (602) 926-4173
FAX (602) 417-3153
TOLL-FREE: 1-800-352-8404
jweiers@azleg.gov

LEGISLATIVE DISTRICT 10

RULES

LEGISLATIVE COUNCIL, VICE-CHAIRMAN

JOINT LEGISLATIVE AUDIT COMMITTEE

September 21, 2007

Dear :

I am asking you to serve on the Ad Hoc Committee on Business Owners and Illegal Immigration. This is a committee comprised of business owners, human resource personnel, attorneys, chamber representatives and law enforcement personnel. The objective of the committee is to give the business community a forum to discuss the newly enacted worksite enforcement law that goes into effect January 1, 2008.

The law the Legislature passed and the Governor signed is a good law – designed to stop bad actors who knowingly employ illegal aliens. I have heard, however, the concerns raised by some of the members of the business community. I want to be sure that the law does nothing to stop law abiding businesses from setting up shop and thriving in Arizona. To that end, I created the Committee to listen to business owners and members of the public, and determine whether there are valid proposals to clarify the law so that worksite enforcement efforts of law enforcement do not unintentionally harm good acting businesses

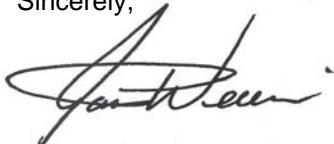
All meetings will be open to the public and held at the House of Representatives. I will sit as the Chairman of the Committee. The House will provide staff and other resources as necessary for this committee. I intend that the first meeting take place at the end of September.

Membership in this committee includes:

Jason LeVecke	CEO, Carl's Jr., Pizza Patron and Bill's Ghost and Spirits
Pat Quinn	President, Qwest Arizona
Doug Quelland	Owner, Thank Q Rentals
Sarah Strunck	Attorney, Fenemore Craig
Richard Bark	Attorney, Gallagher & Kennedy
Ken Rosevear	Executive Director, Yuma Chamber of Commerce
Tim Dunn	Owner, Dunn Farms
Todd Sanders	Vice President, Phoenix Chamber of Commerce
R. Randall Nye	Sr. Vice President and General Counsel, Sundt Construction, Inc.
Richard Bibee	General Manager, Renaissance Scottsdale Resort
Mitch Laird	Franchisee, Burger King
Ed Cook	Executive Director, Arizona Prosecuting Attorneys Advisory Committee
Jolynn Clarke	Manager of Staffing, Salt River Project
Armando Rios	Owner and Businessman, Rios Consulting

Thank you for your service to the State of Arizona.

Sincerely,



JAMES P. WEIERS
Speaker

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2577

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 12, CHAPTER 6, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-716; AMENDING SECTION 12-820.02, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-124; AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1509; AMENDING SECTIONS 13-2002, 15-191.01, 15-232 AND 15-1803, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 14, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1825; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 2 AND 2.1; AMENDING SECTION 26-172, ARIZONA REVISED STATUTES; AMENDING TITLE 26, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; AMENDING TITLE 41, CHAPTER 1, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-199; AMENDING SECTION 41-763, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING SECTION 41-1279.03, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 7, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1292.01; AMENDING SECTION 41-1376, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 8, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1384; CHANGING THE DESIGNATION OF TITLE 41, CHAPTER 12, ARTICLE 1, ARIZONA REVISED STATUTES, TO "GENERAL PROVISIONS"; AMENDING TITLE 41, CHAPTER 12, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1702; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 20; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3016.01; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 41; AMENDING SECTION 43-1021, ARIZONA REVISED

STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 76, SECTION 5; AMENDING SECTIONS 46-801 AND 46-803, ARIZONA REVISED STATUTES; PROVIDING FOR THE DELAYED REPEAL OF SECTION 41-1292.01, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; MAKING APPROPRIATIONS; RELATING TO IMMIGRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 11, chapter 7, Arizona Revised Statutes, is amended
3 by adding article 8, to read:

4 ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

5 11-1051. Cooperation and assistance in enforcement of
6 immigration laws

7 A. ALL OFFICIALS, AGENCIES AND PERSONNEL OF COUNTIES, CITIES AND TOWNS
8 SHALL FULLY COMPLY WITH AND, TO THE FULL EXTENT PERMITTED BY LAW, SUPPORT THE
9 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS OF THE UNITED STATES.

10 B. EXCEPT AS PROVIDED IN FEDERAL LAW, NO OFFICIAL, PERSONNEL OR AGENT
11 OF COUNTIES, CITIES AND TOWNS MAY BE PROHIBITED OR IN ANY WAY RESTRICTED FROM
12 SENDING, RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION
13 STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION
14 WITH ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING
15 OFFICIAL PURPOSES:

16 1. DETERMINATION OF ELIGIBILITY FOR ANY FEDERAL, STATE OR LOCAL PUBLIC
17 BENEFIT, SERVICE OR LICENSE THAT IS RESTRICTED IN WHOLE OR IN PART ON THE
18 BASIS OF IMMIGRATION STATUS.

19 2. VERIFICATION OF ANY CLAIM OF LEGAL DOMICILE IF LEGAL DOMICILE IS
20 REQUIRED BY LAW OR CONTRACT.

21 3. CONFIRMATION OF THE IDENTITY OF ANY PERSON WHO IS DETAINED AND WHO
22 CLAIMS NOT TO BE A CITIZEN OF THE UNITED STATES.

23 C. COUNTY SHERIFFS AND POLICE DEPARTMENTS OF CITIES AND TOWNS SHALL
24 ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE UNITED STATES DEPARTMENT OF
25 JUSTICE OR THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO DESIGNATE
26 OFFICERS AS IMMIGRATION OFFICERS QUALIFIED TO INVESTIGATE, APPREHEND AND
27 DETAIN ILLEGAL ALIENS IN THE UNITED STATES TO THE FULLEST EXTENT CONSISTENT
28 WITH STATE AND FEDERAL LAW. COUNTY SHERIFFS AND POLICE DEPARTMENTS OF CITIES
29 AND TOWNS MAY REQUEST ASSISTANCE FROM THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE
30 IN COMPLETING AND ENTERING INTO A MEMORANDUM OF UNDERSTANDING UNDER THIS
31 SUBSECTION.

32 D. COUNTY SHERIFFS AND POLICE DEPARTMENTS OF CITIES AND TOWNS SHALL
33 IMPLEMENT A PROGRAM TO TRAIN PEACE OFFICERS TO INVESTIGATE VIOLATIONS OF
34 FEDERAL IMMIGRATION LAWS. UPON REQUEST BY A COUNTY SHERIFF OR POLICE
35 DEPARTMENT OF A CITY OR TOWN, THE ARIZONA PEACE OFFICER STANDARDS AND
36 TRAINING BOARD SHALL PROVIDE ASSISTANCE TO IMPLEMENT A TRAINING PROGRAM.

37 E. THE REQUIREMENTS AND OBLIGATIONS OF THIS SECTION SHALL BE
38 IMPLEMENTED IN A MANNER FULLY CONSISTENT WITH FEDERAL LAW REGULATING
39 IMMIGRATION AND PROTECTING THE CIVIL RIGHTS OF CITIZENS AND ALIENS.

40 Sec. 2. Title 12, chapter 6, article 12, Arizona Revised Statutes, is
41 amended by adding section 12-716, to read:

42 12-716. Actions by illegal aliens prohibited

43 NOTWITHSTANDING ANY LAW TO THE CONTRARY, A PERSON WHO IS PRESENT IN
44 THIS STATE IN VIOLATION OF 8 UNITED STATES CODE SECTION 1325 SHALL NOT BE
45 AWARDED PUNITIVE DAMAGES IN ANY ACTION IN ANY COURT IN THIS STATE.

1 Sec. 3. Section 12-820.02, Arizona Revised Statutes, is amended to
2 read:

3 12-820.02. Qualified immunity

4 A. Unless a public employee acting within the scope of the public
5 employee's employment intended to cause injury or was grossly negligent,
6 neither a public entity nor a public employee is liable for:

7 1. The failure to make an arrest or the failure to retain an arrested
8 person in custody.

9 2. An injury caused by an escaping or escaped prisoner or a youth
10 committed to the department of juvenile corrections.

11 3. An injury resulting from the probation, community supervision or
12 discharge of a prisoner or a youth committed to the department of juvenile
13 corrections, from the terms and conditions of the prisoner's or youth's
14 probation or community supervision or from the revocation of the prisoner's
15 or youth's probation, community supervision or conditional release under the
16 psychiatric security review board.

17 4. An injury caused by a prisoner to any other prisoner or an injury
18 caused by a youth committed to the department of juvenile corrections to any
19 other committed youth.

20 5. The issuance of or failure to revoke or suspend any permit,
21 license, certificate, approval, order or similar authorization for which
22 absolute immunity is not provided pursuant to section 12-820.01.

23 6. The failure to discover violations of any provision of law when
24 inspections are done of property other than property owned by the public
25 entity in question.

26 7. An injury to the driver of a motor vehicle that is attributable to
27 the violation by the driver of section 28-693, 28-1381 or 28-1382.

28 8. The failure to prevent the sale or transfer of a handgun to a
29 person whose receipt or possession of the handgun is unlawful under any
30 federal law or any law of this state.

31 9. Preventing the sale or transfer of a handgun to a person who may
32 lawfully receive or possess a handgun.

33 10. The failure to detain a juvenile taken into temporary custody or
34 arrested for a criminal offense or delinquent or incorrigible act in the
35 appropriate detention facility, jail or lockup described in section 8-305.

36 11. **QUESTIONING A PERSON'S IMMIGRATION STATUS PURSUANT TO SECTION**
37 **13-124.**

38 B. The qualified immunity provided in this section applies to a public
39 entity or public employee if the injury or damage was caused by a
40 contractor's employee or a contractor of a public entity acting within the
41 scope of the contract. The qualified immunity provided in this section does
42 not apply to the contractor or the contractor's employee.

1 G. NOTWITHSTANDING SUBSECTION D OF THIS SECTION, IF THE PERSON
2 VIOLATES THIS SECTION WHILE IN POSSESSION OF ANY OF THE FOLLOWING, THE
3 VIOLATION IS A CLASS 2 FELONY:

- 4 1. A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.
- 5 2. PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF
6 METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.
- 7 3. A DEADLY WEAPON AS DEFINED IN SECTION 13-3101 OR A DANGEROUS
8 INSTRUMENT AS DEFINED IN SECTION 13-105.
- 9 4. PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF
10 TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.

11 Sec. 6. Section 13-2002, Arizona Revised Statutes, is amended to read:
12 13-2002. Forgery; classification

13 A. A person commits forgery if, with intent to defraud, the person:

- 14 1. Falsely makes, completes or alters a written instrument; or
- 15 2. Knowingly possesses a forged instrument; or
- 16 3. Offers or presents, whether accepted or not, a forged instrument or

17 one that contains false information; OR ~~—~~

18 4. FALSELY MAKES OR ALTERS A WRITTEN INSTRUMENT THAT PURPORTS TO BE A
19 DOCUMENT THAT FULFILLS THE REQUIREMENTS FOR ESTABLISHING IDENTITY, OR
20 ELIGIBILITY TO WORK IN THE UNITED STATES PURSUANT TO THE FEDERAL IMMIGRATION
21 REFORM AND CONTROL ACT OF 1986, AND THAT IS USED TO OBTAIN EMPLOYMENT IN THIS
22 STATE BY A PERSON WHO IS NOT AUTHORIZED TO WORK IN THE UNITED STATES.

23 B. The possession of five or more forged instruments may give rise to
24 an inference that the instruments are possessed with an intent to defraud.

25 C. IF THE COURT ORDERS RESTITUTION FOR A VIOLATION OF SUBSECTION A,
26 PARAGRAPH 4, THE RESTITUTION ORDER SHALL INCLUDE DAMAGES INCURRED BY ANY
27 EMPLOYER WHO RELIED ON A FORGED INSTRUMENT IN HIRING OR EMPLOYING A PERSON
28 WHO WAS NOT AUTHORIZED TO WORK IN THE UNITED STATES, INCLUDING THE EMPLOYER'S
29 COSTS, ATTORNEY FEES AND EXPENSES.

30 ~~C.~~ D. FORGERY PURSUANT TO SUBSECTION A, PARAGRAPH 4 IS A CLASS 3
31 FELONY. Forgery PURSUANT TO SUBSECTION A, PARAGRAPH 1, 2 OR 3 is a class 4
32 felony.

33 Sec. 7. Section 15-191.01, Arizona Revised Statutes, is amended to
34 read:

35 15-191.01. Family literacy program; procedures; curriculum;
36 eligibility plan

37 A. The family literacy program is established in the state board of
38 education through the division of early childhood education programs to
39 increase the basic academic and literacy skills of eligible parents and their
40 preschool children in accordance with this article. The state board of
41 education shall establish family literacy projects as part of the overall
42 program at locations where there is a high incidence of economic and
43 educational disadvantage as determined by the state board of education in
44 consultation with the department of economic security and, as appropriate,
45 other state agencies.

1 B. The state board of education shall adopt procedures necessary to
2 implement the family literacy program.

3 C. The state board of education shall establish guidelines for
4 requiring family literacy program participants to engage in community service
5 activities in exchange for benefits received from the program. Participants
6 shall be allowed to choose from a variety of community and faith-based
7 service providers that are under contract with the department to provide
8 community service opportunities or program services. Participants shall be
9 allowed and encouraged to engage in community services within their own
10 communities. Participants shall be allowed to fulfill the requirements of
11 this subsection by providing community services to the program from which
12 they received services.

13 D. The state board of education shall submit an annual report by
14 December 31 to the governor, the speaker of the house of representatives and
15 the president of the senate regarding the community service activities of
16 family literacy program participants pursuant to subsection C, including
17 information on the number of participants, the types of community service
18 performed and the number of hours spent in community service activities.

19 E. Local education agencies and adult education programs funded by the
20 department of education are eligible for grants if the state board of
21 education determines that a high percentage of adults in the county, the
22 local school district or the targeted local school service area have not
23 graduated from high school. Selection criteria for grant awards shall
24 include at a minimum the educational needs of the adult population, the
25 incidence of unemployment in the county, district or local targeted school
26 service area, the degree to which community collaboration and partnership
27 demonstrate the ability to bring additional resources to the program and the
28 readiness and likelihood of the proposing organizations to establish a
29 successful family literacy project.

30 F. Each project team shall include representatives from each of the
31 following:

32 1. One or more local school districts or the county school
33 superintendent's office.

34 2. An adult education provider funded by the division of adult
35 education or a provider that complies with the policies, academic standards,
36 performance outcomes, assessment and data collection requirements of adult
37 education as prescribed by the division of adult education.

38 3. A private or public early childhood education provider.

39 4. Any other social service, governmental or private agency that may
40 provide assistance for the planning and operation of the project.

41 G. In addition to the grants prescribed in subsection H, the state
42 board of education shall authorize two grants to existing literacy programs
43 in this state that can offer training and serve as models and training
44 resources for the establishment and expansion of other programs throughout
45 this state. Existing literacy programs shall submit a grant application to

1 the state board of education in the same manner as prescribed in
2 subsection K.

3 H. The state board of education shall authorize additional grants
4 through the division of early childhood education programs in areas of
5 educational and economic need.

6 I. Selected projects shall use either:

7 1. A nationally recognized family literacy model such as models
8 developed by the national center for family literacy or its successor.

9 2. A model that, in the determination of the project team and the
10 state board of education, is superior to a nationally recognized family
11 literacy model.

12 J. Eligible parents shall be instructed in adult basic education and
13 general educational development. Preschool children shall receive
14 instruction in developmentally appropriate early childhood programs. Other
15 planned, structured activities involving parents and children in learning
16 activities may be established as a part of the curriculum.

17 K. Each grant application shall include a plan to address at least the
18 following:

19 1. Identification and recruitment of eligible parents and children.

20 2. Screening and preparation of parents and children for participation
21 in the family literacy program.

22 3. Instructional programs and assessment practices that promote
23 academic and literacy skills and that equip parents to provide needed support
24 for the educational growth and success of their children.

25 4. A determination that at least ten but no more than twenty parents
26 with children will be eligible for and be enrolled in the family literacy
27 program at all times, or that the family literacy programs shall document
28 efforts to continually recruit eligible families.

29 5. Provision of child care through either private or public providers.

30 6. A transportation plan for participants.

31 7. An organizational partnership involving at a minimum a common
32 school, a private or publicly funded preschool provider and an adult
33 education program funded by the department of education or by an outside
34 funding source.

35 L. THIS SECTION SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION,
36 GENDER, ETHNICITY OR NATIONAL ORIGIN.

37 M. THE STATE BOARD OF EDUCATION SHALL REPORT ON DECEMBER 31 AND JUNE
38 30 OF EACH YEAR TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE TOTAL NUMBER OF
39 PARENTS WHO APPLIED TO PARTICIPATE IN A PROGRAM UNDER THIS ARTICLE AND THE
40 TOTAL NUMBER OF PARENTS WHO WERE NOT ELIGIBLE UNDER THIS ARTICLE BECAUSE THE
41 PARENT WAS NOT AN ELIGIBLE PARENT AS DEFINED IN SECTION 15-191, PARAGRAPH 1,
42 SUBDIVISION (c).

1 Sec. 8. Section 15-232, Arizona Revised Statutes, is amended to read:
2 15-232. Division of adult education; duties

3 A. There is established a division of adult education within the
4 department of education, under the jurisdiction of the state board ~~for~~
5 ~~vocational and technologica~~ OF education, which shall:

6 1. Prescribe a course of study for adult education in school
7 districts.

8 2. Make available and supervise the program of adult education in
9 other institutions and agencies of this state.

10 3. Adopt rules for the establishment and conduct of classes for
11 immigrant and adult education, including the teaching of English to
12 foreigners, in school districts.

13 4. Devise plans for establishment and maintenance of classes for
14 immigrant and adult education, including the teaching of English to
15 foreigners, stimulate and correlate the Americanization work of various
16 agencies, including governmental, and perform such other duties as may be
17 prescribed by the state board of education and the superintendent of public
18 instruction.

19 5. Prescribe a course of study to provide training for adults to
20 continue their basic education to the degree of passing a general equivalency
21 diploma test or an equivalency test approved by the state board of education.

22 B. THE DEPARTMENT OF EDUCATION SHALL PROVIDE CLASSES UNDER THIS
23 SECTION ONLY TO ADULTS WHO ARE CITIZENS OR LEGAL RESIDENTS OF THE UNITED
24 STATES OR ARE OTHERWISE LAWFULLY PRESENT IN THE UNITED STATES. THIS
25 SUBSECTION SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION, GENDER,
26 ETHNICITY OR NATIONAL ORIGIN.

27 C. THE DEPARTMENT OF EDUCATION SHALL REPORT ON DECEMBER 31 AND JUNE 30
28 OF EACH YEAR TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE TOTAL NUMBER OF
29 ADULTS WHO APPLIED FOR INSTRUCTION AND THE TOTAL NUMBER OF ADULTS WHO WERE
30 DENIED INSTRUCTION UNDER THIS SECTION BECAUSE THE APPLICANT WAS NOT A CITIZEN
31 OR LEGAL RESIDENT OF THE UNITED STATES OR WAS NOT OTHERWISE LAWFULLY PRESENT
32 IN THE UNITED STATES.

33 Sec. 9. Section 15-1803, Arizona Revised Statutes, is amended to read:
34 15-1803. Alien in-state student status

35 A. An alien is entitled to classification as an in-state refugee
36 student if such person has been granted refugee status in accordance with all
37 applicable laws of the United States and has met all other requirements for
38 domicile.

39 B. IN ACCORDANCE WITH THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT
40 RESPONSIBILITY ACT OF 1996 (P.L. 104-208; 110 STAT. 3009), A PERSON WHO IS
41 NOT A CITIZEN OR LEGAL RESIDENT OF THE UNITED STATES OR WHO IS WITHOUT LAWFUL
42 IMMIGRATION STATUS IS NOT ENTITLED TO CLASSIFICATION AS AN IN-STATE STUDENT
43 PURSUANT TO SECTION 15-1802 OR ENTITLED TO CLASSIFICATION AS A COUNTY
44 RESIDENT PURSUANT TO SECTION 15-1802.01.

1 C. EACH COMMUNITY COLLEGE AND UNIVERSITY SHALL REPORT ON DECEMBER 31
2 AND JUNE 30 OF EACH YEAR TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE TOTAL
3 NUMBER OF STUDENTS WHO WERE ENTITLED TO CLASSIFICATION AS AN IN-STATE STUDENT
4 AND THE TOTAL NUMBER OF STUDENTS WHO WERE NOT ENTITLED TO CLASSIFICATION AS
5 AN IN-STATE STUDENT UNDER THIS SECTION BECAUSE THE STUDENT WAS NOT A CITIZEN
6 OR LEGAL RESIDENT OF THE UNITED STATES OR IS WITHOUT LAWFUL IMMIGRATION
7 STATUS.

8 Sec. 10. Title 15, chapter 14, article 2, Arizona Revised Statutes, is
9 amended by adding section 15-1825, to read:

10 15-1825. Prohibited financial assistance; report

11 A. A PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES, WHO IS WITHOUT
12 LAWFUL IMMIGRATION STATUS AND WHO IS ENROLLED AS A STUDENT AT ANY UNIVERSITY
13 UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS OR AT ANY COMMUNITY
14 COLLEGE UNDER THE JURISDICTION OF A COMMUNITY COLLEGE DISTRICT IN THIS STATE
15 IS NOT ENTITLED TO TUITION WAIVERS, FEE WAIVERS, GRANTS, SCHOLARSHIP
16 ASSISTANCE, FINANCIAL AID, TUITION ASSISTANCE OR ANY OTHER TYPE OF FINANCIAL
17 ASSISTANCE THAT IS SUBSIDIZED OR PAID IN WHOLE OR IN PART WITH STATE MONIES.

18 B. EACH COMMUNITY COLLEGE AND UNIVERSITY SHALL REPORT ON DECEMBER 31
19 AND JUNE 30 OF EACH YEAR TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE TOTAL
20 NUMBER OF STUDENTS WHO APPLIED AND THE TOTAL NUMBER OF STUDENTS WHO WERE NOT
21 ENTITLED TO TUITION WAIVERS, FEE WAIVERS, GRANTS, SCHOLARSHIP ASSISTANCE,
22 FINANCIAL AID, TUITION ASSISTANCE OR ANY OTHER TYPE OF FINANCIAL ASSISTANCE
23 THAT IS SUBSIDIZED OR PAID IN WHOLE OR IN PART WITH STATE MONIES UNDER THIS
24 SECTION BECAUSE THE STUDENT WAS NOT A CITIZEN OR LEGAL RESIDENT OF THE UNITED
25 STATES OR NOT LAWFULLY PRESENT IN THE UNITED STATES.

26 C. THIS SECTION SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION,
27 GENDER, ETHNICITY OR NATIONAL ORIGIN.

28 Sec. 11. Title 23, chapter 2, Arizona Revised Statutes, is amended by
29 adding articles 2 and 2.1, to read:

30 ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED WORKERS

31 23-211. Definitions

32 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

33 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
34 STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR PURPOSES OF
35 OPERATING A BUSINESS IN THIS STATE.

36 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
37 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
38 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

39 3. "EMPLOYER" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION, INCLUDING
40 THIS STATE AND ALL OF ITS POLITICAL SUBDIVISIONS, THAT HAS IN ITS EMPLOY ONE
41 OR MORE INDIVIDUALS PERFORMING SERVICES FOR IT IN EMPLOYMENT AND INCLUDES
42 SELF-EMPLOYED PERSONS.

43 4. "KNOWINGLY" MEANS, WITH RESPECT TO CONDUCT OR TO A CIRCUMSTANCE
44 DESCRIBED BY A STATUTE DEFINING AN OFFENSE, THAT A PERSON IS AWARE OR

1 BELIEVES THAT THE PERSON'S CONDUCT IS OF THAT NATURE OR THAT THE CIRCUMSTANCE
2 EXISTS.

3 5. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL,
4 REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY
5 LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS
6 IN THIS STATE.

7 6. "UNAUTHORIZED WORKER" MEANS A PERSON WHO IS AN ALIEN AND WHO IS NOT
8 AUTHORIZED TO BE EMPLOYED UNDER FEDERAL LAW. FOR THE PURPOSES OF THIS
9 PARAGRAPH, "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE
10 UNITED STATES.

11 23-212. Verification of employees; civil and criminal immunity

12 NOTWITHSTANDING ANY OTHER LAW, AN EMPLOYER WHO DOES ANY OF THE
13 FOLLOWING IS NOT SUBJECT TO ANY CIVIL OR CRIMINAL PENALTY IMPOSED BY THIS
14 STATE, OR ANY ADMINISTRATIVE OR JUDICIAL ACTION, FOR EMPLOYING AN
15 UNAUTHORIZED WORKER:

16 1. VERIFIES THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYER'S EMPLOYEES
17 THROUGH THE BASIC PILOT PROGRAM.

18 2. COMPLIES WITH FEDERAL AND STATE LAWS REGARDING ALL OF THE
19 FOLLOWING:

20 (a) COMPLETING AND RETAINING I-9 EMPLOYMENT ELIGIBILITY VERIFICATION
21 FORMS AS REQUIRED BY FEDERAL LAW.

22 (b) REPORTING NEWLY HIRED EMPLOYEES TO THE DEPARTMENT OF ECONOMIC
23 SECURITY FOR CHILD SUPPORT ENFORCEMENT PURPOSES PURSUANT TO SECTION
24 23-722.01.

25 (c) REPORTING THE EMPLOYEES TO THE DEPARTMENT OF REVENUE PURSUANT TO
26 TITLE 43, CHAPTER 4, ARTICLES 1 AND 2 AND TO THE INTERNAL REVENUE SERVICE AND
27 SOCIAL SECURITY ADMINISTRATION, AS REQUIRED BY FEDERAL LAW.

28 3. MAKES A GOOD FAITH DETERMINATION THAT THE SERVICES OF A PERSON WERE
29 BEING PROVIDED PURSUANT TO AN INDEPENDENT CONTRACTOR RELATIONSHIP RATHER THAN
30 AN EMPLOYMENT RELATIONSHIP.

31 23-213. Employees; social security numbers

32 A. AN EMPLOYER SHALL DISCHARGE AN EMPLOYEE IF THE EMPLOYER DISCOVERS
33 THAT THE EMPLOYEE PROVIDED AN INVALID SOCIAL SECURITY NUMBER TO THE EMPLOYER,
34 UNLESS THE EMPLOYEE PROVIDES A VALID SOCIAL SECURITY NUMBER OR A LEGAL AND
35 VALID FEDERAL OR STATE IDENTIFICATION DOCUMENT TO THE EMPLOYER WITHIN TEN
36 BUSINESS DAYS AFTER RECEIVING NOTICE FROM THE EMPLOYER THAT THE INITIAL
37 NUMBER WAS INVALID.

38 B. THIS SECTION DOES NOT APPLY IF AN ERROR OCCURRED WHEN A VALID
39 SOCIAL SECURITY NUMBER WAS PROCESSED BY THE EMPLOYER, THE FEDERAL GOVERNMENT
40 OR THIS STATE.

41 23-214. Employment of unauthorized workers; cease and desist
42 order; notice

43 A. BEGINNING JANUARY 1, 2007, IF AN ATTORNEY GENERAL'S INVESTIGATION
44 DETERMINES THAT AN EMPLOYER THAT OPERATES A BUSINESS OR ENTERPRISE IN THIS
45 STATE KNOWINGLY EMPLOYS AN UNAUTHORIZED WORKER IN THIS STATE, AS VERIFIED BY

1 THE ATTORNEY GENERAL WITH THE FEDERAL GOVERNMENT, THE ATTORNEY GENERAL SHALL
2 IMMEDIATELY:

3 1. ORDER THE EMPLOYER TO CEASE AND DESIST FROM EMPLOYING THE
4 UNAUTHORIZED WORKER AND TO DISCHARGE FOR CAUSE OTHER UNAUTHORIZED WORKERS WHO
5 ARE IDENTIFIED IN THE CEASE AND DESIST ORDER AND WHO ARE KNOWINGLY EMPLOYED
6 BY THE EMPLOYER IN THIS STATE. THE CEASE AND DESIST ORDER SHALL CONTAIN A
7 NOTICE OF THE EMPLOYER'S RIGHTS TO CONTEST THE ORDER. THE ATTORNEY GENERAL
8 SHALL CONFIRM THAT THE EMPLOYER RECEIVED THE CEASE AND DESIST ORDER BY
9 CERTIFIED MAIL. THE EMPLOYER SHALL COMPLY WITH THE CEASE AND DESIST ORDER
10 WITHIN TEN BUSINESS DAYS AFTER THE ATTORNEY GENERAL CONFIRMS THAT THE
11 EMPLOYER RECEIVED THE ORDER, UNLESS THE EMPLOYER HAS FILED AN APPEAL OF THE
12 ATTORNEY GENERAL'S CEASE AND DESIST ORDER PURSUANT TO SUBSECTION B.

13 2. NOTIFY UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE
14 UNAUTHORIZED WORKER.

15 B. WITHIN TEN BUSINESS DAYS AFTER RECEIVING A CEASE AND DESIST ORDER
16 UNDER SUBSECTION A, THE EMPLOYER MAY EITHER:

- 17 1. REQUEST A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.
18 2. SERVE A NOTICE OF CONTEST OF THE CEASE AND DESIST ORDER, IN WHICH
19 CASE THE ATTORNEY GENERAL MAY BRING AN ACTION IN SUPERIOR COURT, ADJUDICATED
20 ON A TRIAL DE NOVO BASIS, SEEKING TO ENFORCE THE CEASE AND DESIST ORDER.

21 C. IF THE EMPLOYER REQUESTS A HEARING OR SERVES A NOTICE OF CONTEST
22 PURSUANT TO SUBSECTION B, THE CEASE AND DESIST ORDER IS NOT EFFECTIVE UNTIL
23 TEN BUSINESS DAYS AFTER THE EXPIRATION OF ANY TIME PERIOD TO APPEAL FROM THE
24 FINAL ADMINISTRATIVE DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS OR THE
25 DECISION OF THE SUPERIOR COURT AND ANY SUBSEQUENT APPEALS.

26 D. FOR THE PURPOSES OF THIS SECTION, PROOF OF EITHER OF THE FOLLOWING
27 CIRCUMSTANCES, UNLESS SATISFACTORILY EXPLAINED, CREATES A REBUTTABLE
28 PRESUMPTION THAT AN EMPLOYER KNOWINGLY EMPLOYED AN UNAUTHORIZED WORKER:

29 1. THE EMPLOYER VIOLATED THE MINIMUM WAGE REQUIREMENTS PRESCRIBED BY
30 THE FEDERAL FAIR LABOR STANDARDS ACT FOR THE EMPLOYEE WHO IS IDENTIFIED IN
31 THE CEASE AND DESIST ORDER.

32 2. THE EMPLOYER ACCEPTS A CONSULAR IDENTIFICATION CARD THAT IS ISSUED
33 BY A FOREIGN GOVERNMENT AS A FORM OF IDENTIFICATION WHEN DETERMINING THE
34 EMPLOYEE'S IDENTITY.

35 E. BEFORE THE ATTORNEY GENERAL BEGINS AN INVESTIGATION UNDER THIS
36 SECTION THAT IS BASED ON A COMPLAINT MADE TO THE ATTORNEY GENERAL'S OFFICE,
37 THE ATTORNEY GENERAL SHALL REQUIRE THAT THE COMPLAINT BE IN WRITING AND BE
38 SIGNED BY THE COMPLAINANT.

39 23-215. Employment of unauthorized workers; failure to comply
40 with cease and desist order; civil cause of action

41 A. IF AN EMPLOYER FAILS TO COMPLY WITH THE CEASE AND DESIST ORDER
42 UNDER SECTION 23-214, THE ATTORNEY GENERAL MAY BRING A CIVIL CAUSE OF ACTION
43 TO ASSESS A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS AND TO HAVE THE
44 EMPLOYER'S LICENSE SUSPENDED OR REVOKED. IF THE COURT DETERMINES THAT THE
45 EMPLOYER FAILED TO COMPLY WITH THE CEASE AND DESIST ORDER, THE COURT MAY

1 ORDER THE EMPLOYER'S LICENSE TO BE SUSPENDED OR REVOKED BASED ON THE SEVERITY
2 OF THE OFFENSE, EXCEPT THAT IF THE LICENSE IS ISSUED PURSUANT TO RULES
3 ADOPTED BY THE SUPREME COURT THE COURT SHALL REFER THE MATTER TO THE SUPREME
4 COURT TO DETERMINE WHETHER THE LICENSE SHALL BE SUSPENDED OR REVOKED. IF THE
5 COURT ORDERS AN EMPLOYER'S LICENSE TO BE SUSPENDED OR REVOKED, THE COURT
6 SHALL SUSPEND OR REVOKE THE EMPLOYER'S LICENSE IN ORDER TO PREVENT THE
7 EMPLOYER FROM CONDUCTING BUSINESS AT THE BUSINESS LOCATION WHERE THE
8 UNAUTHORIZED WORKER WHO IS IDENTIFIED IN THE CEASE AND DESIST ORDER IS
9 EMPLOYED. IF THE COURT ORDERS AN EMPLOYER'S LICENSE TO BE SUSPENDED OR
10 REVOKED PURSUANT TO THIS SECTION, THE COURT SHALL NOTIFY THE APPROPRIATE
11 AGENCY AND, NOTWITHSTANDING SECTIONS 41-1064 AND 41-1092.11, THE APPROPRIATE
12 AGENCY SHALL IMMEDIATELY SUSPEND THE EMPLOYER'S LICENSE FOR THE TIME PERIOD
13 SPECIFIED BY THE COURT OR REVOKE THE EMPLOYER'S LICENSE.

14 B. IF AN EMPLOYER HAS A LICENSE REVOKED UNDER SUBSECTION A OF THIS
15 SECTION, AN AGENCY SHALL NOT ISSUE A NEW LICENSE TO THE EMPLOYER UNTIL TWO
16 YEARS AFTER THE DATE OF REVOCATION.

17 C. THE COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION
18 A OF THIS SECTION AND REMIT THE CIVIL PENALTY TO THE SUPREME COURT, WHICH
19 SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, THE CIVIL PENALTY IN
20 THE BORDER SECURITY FUND ESTABLISHED BY SECTION 41-2351.

21 D. THIS SECTION DOES NOT REQUIRE THE COURT TO ORDER THE SUSPENSION OR
22 REVOCATION OF EVERY LICENSE THAT IS ISSUED TO THE EMPLOYER.

23 23-216. Indemnification for employer actions

24 IF ANY ADMINISTRATIVE OR JUDICIAL ACTION IS BROUGHT AGAINST AN EMPLOYER
25 BY A FORMER EMPLOYEE AS A RESULT OF THE EMPLOYER'S GOOD FAITH ACTIONS IN
26 COMPLIANCE WITH THIS ARTICLE OR ANY ORDER, DETERMINATION OR NOTICE UNDER THIS
27 ARTICLE, THE STATE SHALL INDEMNIFY THE EMPLOYER AND PAY THE ACTUAL DAMAGES
28 AND COSTS, INCLUDING ATTORNEY FEES, INCURRED BY THE EMPLOYER IN THE DEFENSE
29 OF THE ADMINISTRATIVE OR JUDICIAL ACTION. THE STATE SHALL VERIFY AND PAY THE
30 AMOUNT WITHIN FORTY-FIVE DAYS AFTER THE EMPLOYER SUBMITS THE ACTUAL DAMAGES
31 AND COSTS TO THE STATE. ANY INDEMNIFICATION SHALL BE LIMITED ONLY TO ACTIONS
32 SPECIFICALLY IDENTIFIED IN THIS ARTICLE.

33 23-217. Expedited consideration

34 FOR ANY ACTION UNDER THIS ARTICLE, THE COURT SHALL EXPEDITE THE ACTION,
35 INCLUDING ASSIGNING THE ACTION FOR HEARING AT THE EARLIEST PRACTICABLE DATE.

36 23-218. Employer actions; federal law compliance

37 THIS ARTICLE DOES NOT REQUIRE AN EMPLOYER TO TAKE ANY ACTION THAT THE
38 EMPLOYER BELIEVES IN GOOD FAITH WOULD VIOLATE FEDERAL LAW.

39 ARTICLE 2.1. UNLAWFUL EMPLOYMENT PRACTICES

40 23-221. Definitions

41 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

42 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
43 STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR PURPOSES OF
44 OPERATING A BUSINESS IN THIS STATE.

1 2. "EMPLOYER" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION, INCLUDING
2 THIS STATE AND ALL OF ITS POLITICAL SUBDIVISIONS, THAT HAS IN ITS EMPLOY ONE
3 OR MORE INDIVIDUALS PERFORMING SERVICES FOR IT IN EMPLOYMENT AND INCLUDES
4 SELF-EMPLOYED PERSONS.

5 3. "KNOWINGLY" MEANS, WITH RESPECT TO CONDUCT OR TO A CIRCUMSTANCE
6 DESCRIBED BY A STATUTE DEFINING AN OFFENSE, THAT A PERSON IS AWARE OR
7 BELIEVES THAT THE PERSON'S CONDUCT IS OF THAT NATURE OR THAT THE CIRCUMSTANCE
8 EXISTS.

9 4. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL,
10 REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY
11 LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS
12 IN THIS STATE.

13 23-222. Unlawful employment practices; civil penalty;
14 classification

15 A. ALL EMPLOYERS IN THIS STATE SHALL COMPLETE AND RETAIN I-9
16 EMPLOYMENT ELIGIBILITY VERIFICATION FORMS FOR ALL EMPLOYEES AS PRESCRIBED BY
17 FEDERAL LAW. IF THE ATTORNEY GENERAL DETERMINES THAT AN EMPLOYER HAS FAILED
18 TO COMPLETE AND RETAIN I-9 EMPLOYMENT ELIGIBILITY VERIFICATION FORMS AS
19 PRESCRIBED BY FEDERAL LAW, THE ATTORNEY GENERAL SHALL NOTIFY THE UNITED
20 STATES CITIZENSHIP AND IMMIGRATION SERVICES.

21 B. THE ATTORNEY GENERAL SHALL COORDINATE WITH THE DEPARTMENT OF
22 ECONOMIC SECURITY, THE INDUSTRIAL COMMISSION AND THE DEPARTMENT OF REVENUE TO
23 INVESTIGATE EMPLOYERS IN THIS STATE THAT FAIL TO MAKE PAYMENTS OF
24 CONTRIBUTIONS FOR EMPLOYMENT SECURITY PURPOSES PURSUANT TO SECTION 23-726,
25 SECURE WORKERS' COMPENSATION TO THEIR EMPLOYEES PURSUANT TO SECTION 23-961
26 AND WITHHOLD FROM EMPLOYEES THE AMOUNTS REQUIRED PURSUANT TO SECTION 43-401.

27 C. IF THE ATTORNEY GENERAL DETERMINES SUFFICIENT EVIDENCE EXISTS THAT
28 AN EMPLOYER HAS KNOWINGLY FAILED TO MAKE PAYMENTS OF CONTRIBUTIONS FOR
29 EMPLOYMENT SECURITY PURPOSES PURSUANT TO SECTION 23-726, SECURE WORKERS'
30 COMPENSATION TO ITS EMPLOYEES PURSUANT TO SECTION 23-961 AND WITHHOLD FROM
31 EMPLOYEES THE AMOUNTS REQUIRED PURSUANT TO SECTION 43-401, THE FOLLOWING
32 APPLY FOR A FIRST VIOLATION DURING A ONE YEAR PERIOD:

33 1. THE ATTORNEY GENERAL SHALL MAIL A WRITTEN NOTICE TO THE EMPLOYER BY
34 CERTIFIED MAIL DESCRIBING THE VIOLATION.

35 2. WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE UNDER PARAGRAPH 1 OF
36 THIS SUBSECTION, THE EMPLOYER MAY CONTEST THE ATTORNEY GENERAL'S
37 DETERMINATION BY NOTIFYING THE ATTORNEY GENERAL. AFTER THE EMPLOYER NOTIFIES
38 THE ATTORNEY GENERAL THAT THE EMPLOYER IS CONTESTING THE ATTORNEY GENERAL'S
39 DETERMINATION, THE EMPLOYER SHALL PROVIDE SUPPORTING EVIDENCE TO THE ATTORNEY
40 GENERAL THAT THE EMPLOYER DID NOT VIOLATE THIS SUBSECTION. THE ATTORNEY
41 GENERAL SHALL ALLOW A REASONABLE AMOUNT OF TIME FOR THE EMPLOYER TO OBTAIN
42 COPIES OF SUPPORTING INFORMATION AND DOCUMENTS FROM FEDERAL AND STATE
43 AGENCIES.

44 3. AFTER RECEIVING SUPPORTING EVIDENCE UNDER PARAGRAPH 2 OF THIS
45 SUBSECTION, THE ATTORNEY GENERAL SHALL EVALUATE THE EVIDENCE AND SHALL ISSUE

1 A FINAL DETERMINATION THAT EITHER AFFIRMS THE ORIGINAL DETERMINATION OR
2 DISMISSES THE ORIGINAL DETERMINATION. THE ATTORNEY GENERAL SHALL MAIL THE
3 FINAL DETERMINATION BY CERTIFIED MAIL TO THE EMPLOYER WITHIN SIXTY DAYS AFTER
4 RECEIVING THE SUPPORTING EVIDENCE.

5 4. WITHIN TEN BUSINESS DAYS AFTER RECEIVING THE FINAL DETERMINATION
6 UNDER PARAGRAPH 3 OF THIS SUBSECTION, THE EMPLOYER MAY:

7 (a) REQUEST A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

8 (b) SERVE A NOTICE OF CONTEST OF THE FINAL DETERMINATION, IN WHICH
9 CASE THE ATTORNEY GENERAL MAY BRING AN ACTION IN SUPERIOR COURT, ADJUDICATED
10 ON A TRIAL DE NOVO BASIS, SEEKING TO ENFORCE THE FINAL DETERMINATION.

11 5. IF THE EMPLOYER REQUESTS A HEARING OR SERVES A NOTICE OF CONTEST
12 PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION, THE FINAL DETERMINATION IS NOT
13 EFFECTIVE UNTIL TEN BUSINESS DAYS AFTER THE EXPIRATION OF ANY TIME PERIOD TO
14 APPEAL FROM THE FINAL ADMINISTRATIVE DECISION OF THE OFFICE OF ADMINISTRATIVE
15 HEARINGS OR THE DECISION OF THE SUPERIOR COURT AND ANY SUBSEQUENT APPEALS.

16 6. IF THE OUTCOME OF THE DETERMINATION AND APPEALS PROCESS UNDER
17 PARAGRAPHS 2 THROUGH 5 OF THIS SUBSECTION AFFIRMS THE VIOLATION, THE EMPLOYER
18 IS SUBJECT TO A CIVIL PENALTY. THE CIVIL PENALTY IS TWO THOUSAND DOLLARS FOR
19 EACH EMPLOYEE FOR WHICH THE EMPLOYER KNOWINGLY FAILED TO COMPLY WITH THIS
20 SUBSECTION, BUT NOT TO EXCEED TEN THOUSAND DOLLARS. THE ATTORNEY GENERAL
21 SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE STATE
22 TREASURER AND THE STATE TREASURER SHALL DEPOSIT THE MONIES IN THE BORDER
23 SECURITY FUND ESTABLISHED BY SECTION 41-2351.

24 7. AN EMPLOYER WHO IS SUBJECT TO A CIVIL PENALTY UNDER PARAGRAPH 6 OF
25 THIS SUBSECTION IS SUBJECT TO AN ADDITIONAL PENALTY. THE AMOUNT OF THE
26 ADDITIONAL PENALTY IS EQUAL TO THE AMOUNT OF REVENUE, INCLUDING INTEREST,
27 THAT WAS LOST TO THIS STATE FOR FAILING TO MAKE PAYMENTS OF CONTRIBUTIONS FOR
28 EMPLOYMENT SECURITY PURPOSES PURSUANT TO SECTION 23-726, SECURE WORKERS'
29 COMPENSATION TO EMPLOYEES PURSUANT TO SECTION 23-961 AND WITHHOLD FROM
30 EMPLOYEES THE AMOUNTS REQUIRED PURSUANT TO SECTION 43-401. THE ATTORNEY
31 GENERAL SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE
32 STATE TREASURER FOR DEPOSIT IN THE BORDER SECURITY FUND ESTABLISHED BY
33 SECTION 41-2351.

34 D. THE FOLLOWING APPLY FOR A SECOND VIOLATION BY AN EMPLOYER WHO
35 KNOWINGLY FAILS TO MAKE PAYMENTS OF CONTRIBUTIONS FOR EMPLOYMENT SECURITY
36 PURPOSES PURSUANT TO SECTION 23-726, SECURE WORKERS' COMPENSATION TO ITS
37 EMPLOYEES PURSUANT TO SECTION 23-961 AND WITHHOLD FROM EMPLOYEES THE AMOUNTS
38 REQUIRED PURSUANT TO SECTION 43-401 DURING A ONE YEAR PERIOD:

39 1. A SECOND VIOLATION IS A CLASS 1 MISDEMEANOR. THE EMPLOYER IS NOT
40 SUBJECT TO PROSECUTION FOR A SECOND VIOLATION UNLESS THE PROCESS DESCRIBED
41 UNDER SUBSECTION C OF THIS SECTION IS COMPLETED.

42 2. ON CONVICTION, THE COURT MAY ORDER THAT THE EMPLOYER'S LICENSE BE
43 SUSPENDED BASED ON THE SEVERITY OF THE OFFENSE, EXCEPT THAT IF THE LICENSE IS
44 ISSUED PURSUANT TO RULES ADOPTED BY THE SUPREME COURT THE COURT SHALL REFER
45 THE MATTER TO THE SUPREME COURT TO DETERMINE WHETHER THE LICENSE SHALL BE

1 SUSPENDED OR REVOKED. IF THE COURT SUSPENDS A LICENSE PURSUANT TO THIS
2 SUBSECTION, THE COURT SHALL NOTIFY THE APPROPRIATE AGENCY AND,
3 NOTWITHSTANDING SECTIONS 41-1064 AND 41-1092.11, THE APPROPRIATE AGENCY SHALL
4 IMMEDIATELY SUSPEND THE EMPLOYER'S LICENSE FOR THE TIME PERIOD SPECIFIED BY
5 THE COURT.

6 3. ON CONVICTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY AN
7 ADDITIONAL ASSESSMENT. THE ADDITIONAL ASSESSMENT IS FOUR THOUSAND DOLLARS
8 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER KNOWINGLY FAILED TO COMPLY WITH THIS
9 SECTION. THE COURT SHALL TRANSMIT THE MONIES COLLECTED PURSUANT TO THIS
10 PARAGRAPH TO THE STATE TREASURER FOR DEPOSIT IN THE BORDER SECURITY FUND
11 ESTABLISHED BY SECTION 41-2351.

12 4. ON CONVICTION, THE COURT SHALL ALSO ORDER THE EMPLOYER TO PAY AN
13 ADDITIONAL ASSESSMENT THAT IS EQUAL TO TWO TIMES THE AMOUNT OF REVENUE,
14 INCLUDING INTEREST, THAT WAS LOST TO THIS STATE FOR FAILING TO MAKE PAYMENTS
15 OF CONTRIBUTIONS FOR EMPLOYMENT SECURITY PURPOSES PURSUANT TO SECTION 23-726,
16 SECURE WORKERS' COMPENSATION TO EMPLOYEES PURSUANT TO SECTION 23-961 AND
17 WITHHOLD FROM EMPLOYEES THE AMOUNTS REQUIRED PURSUANT TO SECTION 43-401. THE
18 COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE
19 STATE TREASURER FOR DEPOSIT IN THE BORDER SECURITY FUND ESTABLISHED BY
20 SECTION 41-2351.

21 E. THE FOLLOWING APPLY FOR A THIRD VIOLATION BY AN EMPLOYER WHO
22 KNOWINGLY FAILS TO MAKE PAYMENTS OF CONTRIBUTIONS FOR EMPLOYMENT SECURITY
23 PURPOSES PURSUANT TO SECTION 23-726, SECURE WORKERS' COMPENSATION TO ITS
24 EMPLOYEES PURSUANT TO SECTION 23-961 AND WITHHOLD FROM EMPLOYEES THE AMOUNTS
25 REQUIRED PURSUANT TO SECTION 43-401 DURING A ONE YEAR PERIOD:

26 1. A THIRD VIOLATION IS A CLASS 1 MISDEMEANOR AND THE COURT SHALL
27 SENTENCE THE EMPLOYER TO SERVE THE MAXIMUM SENTENCE AUTHORIZED BY LAW. THE
28 EMPLOYER IS NOT SUBJECT TO PROSECUTION FOR A THIRD VIOLATION UNLESS THE
29 PROCESS DESCRIBED UNDER SUBSECTIONS C AND D OF THIS SECTION IS COMPLETED.

30 2. ON CONVICTION, THE COURT MAY ORDER THAT THE EMPLOYER'S LICENSE BE
31 SUSPENDED OR REVOKED BASED ON THE SEVERITY OF THE OFFENSE, EXCEPT THAT IF THE
32 LICENSE IS ISSUED PURSUANT TO RULES ADOPTED BY THE SUPREME COURT THE COURT
33 SHALL REFER THE MATTER TO THE SUPREME COURT TO DETERMINE WHETHER THE LICENSE
34 SHALL BE SUSPENDED OR REVOKED. IF THE COURT SUSPENDS OR REVOKES A LICENSE
35 PURSUANT TO THIS SUBSECTION, THE COURT SHALL NOTIFY THE APPROPRIATE AGENCY
36 AND, NOTWITHSTANDING SECTIONS 41-1064 AND 41-1092.11, THE APPROPRIATE AGENCY
37 SHALL IMMEDIATELY SUSPEND THE EMPLOYER'S LICENSE FOR THE TIME PERIOD
38 SPECIFIED BY THE COURT OR REVOKE THE EMPLOYER'S LICENSE. IF AN EMPLOYER HAS
39 A LICENSE REVOKED PURSUANT TO THIS PARAGRAPH, AN AGENCY SHALL NOT ISSUE A NEW
40 LICENSE TO THE EMPLOYER UNTIL TWO YEARS AFTER THE DATE OF REVOCATION.

41 3. ON CONVICTION, THE COURT SHALL ORDER THE EMPLOYER TO PAY AN
42 ADDITIONAL ASSESSMENT. THE ADDITIONAL ASSESSMENT IS SIX THOUSAND DOLLARS FOR
43 EACH EMPLOYEE FOR WHOM THE EMPLOYER KNOWINGLY FAILED TO COMPLY WITH THIS
44 SECTION. THE COURT SHALL TRANSMIT THE MONIES COLLECTED PURSUANT TO THIS

1 PARAGRAPH TO THE STATE TREASURER FOR DEPOSIT IN THE BORDER SECURITY FUND
2 ESTABLISHED BY SECTION 41-2351.

3 4. ON CONVICTION, THE COURT SHALL ALSO ORDER THE EMPLOYER TO PAY AN
4 ADDITIONAL ASSESSMENT THAT IS EQUAL TO THREE TIMES THE AMOUNT OF REVENUE,
5 INCLUDING INTEREST, THAT WAS LOST TO THIS STATE FOR FAILING TO MAKE PAYMENTS
6 OF CONTRIBUTIONS FOR EMPLOYMENT SECURITY PURPOSES PURSUANT TO SECTION 23-726,
7 SECURE WORKERS' COMPENSATION TO EMPLOYEES PURSUANT TO SECTION 23-961 AND
8 WITHHOLD FROM EMPLOYEES THE AMOUNTS REQUIRED PURSUANT TO SECTION 43-401. THE
9 COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS PARAGRAPH TO THE
10 STATE TREASURER FOR DEPOSIT IN THE BORDER SECURITY FUND ESTABLISHED BY
11 SECTION 41-2351.

12 5. THE ATTORNEY GENERAL SHALL RECORD THE JUDGMENT OF THE COURT, IF
13 UNPAID WITHIN TEN BUSINESS DAYS, AS A LIEN AGAINST THE EMPLOYER.

14 F. LAW ENFORCEMENT AUTHORITIES SHALL NOT PROVIDE ANY INCENTIVES TO LAW
15 ENFORCEMENT OFFICERS FOR INVESTIGATING ALLEGED VIOLATIONS OF THIS SECTION.

16 G. THE PENALTIES UNDER THIS SECTION ARE IN ADDITION TO ANY OTHER
17 PENALTIES THAT MAY BE IMPOSED BY LAW.

18 H. BEFORE THE ATTORNEY GENERAL BEGINS AN INVESTIGATION UNDER THIS
19 SECTION THAT IS BASED ON A COMPLAINT MADE TO THE ATTORNEY GENERAL'S OFFICE,
20 THE ATTORNEY GENERAL SHALL REQUIRE THAT THE COMPLAINT BE IN WRITING AND BE
21 SIGNED BY THE COMPLAINANT.

22 23-223. Indemnification for employer actions

23 IF ANY ADMINISTRATIVE OR JUDICIAL ACTION IS BROUGHT AGAINST AN EMPLOYER
24 BY A FORMER EMPLOYEE AS A RESULT OF THE EMPLOYER'S GOOD FAITH ACTIONS IN
25 COMPLIANCE WITH THIS ARTICLE OR ANY ORDER, DETERMINATION OR NOTICE UNDER THIS
26 ARTICLE, THE STATE SHALL INDEMNIFY THE EMPLOYER AND PAY THE ACTUAL DAMAGES
27 AND COSTS, INCLUDING ATTORNEY FEES, INCURRED BY THE EMPLOYER IN THE DEFENSE
28 OF THE ADMINISTRATIVE OR JUDICIAL ACTION. THE STATE SHALL VERIFY AND PAY THE
29 AMOUNT WITHIN FORTY-FIVE DAYS AFTER THE EMPLOYER SUBMITS THE ACTUAL DAMAGES
30 AND COSTS TO THE STATE. ANY INDEMNIFICATION SHALL BE LIMITED ONLY TO ACTIONS
31 SPECIFICALLY IDENTIFIED IN THIS ARTICLE.

32 23-224. Expedited consideration

33 FOR ANY ACTION UNDER THIS ARTICLE, THE COURT SHALL EXPEDITE THE ACTION,
34 INCLUDING ASSIGNING THE ACTION FOR HEARING AT THE EARLIEST PRACTICABLE DATE.

35 23-225. Employer actions; federal law compliance

36 THIS ARTICLE DOES NOT REQUIRE AN EMPLOYER TO TAKE ANY ACTION THAT THE
37 EMPLOYER BELIEVES IN GOOD FAITH WOULD VIOLATE FEDERAL LAW.

38 Sec. 12. Section 26-172, Arizona Revised Statutes, is amended to read:

39 26-172. Emergency mobilization; requests by municipalities for
40 aid of national guard; mobilization into United
41 States service

42 A. When the governor proclaims an emergency, or deems it necessary to
43 protect lives or property, the governor may mobilize all or any part of the
44 national guard or the unorganized militia into service of the state. The
45 order directing the national guard or the unorganized militia, or any part

1 thereof, to report for active duty shall state the purpose for which it is
2 mobilized and the objectives to be accomplished. IF THE GOVERNOR DECLARES
3 THAT A STATE OF EMERGENCY EXISTS FOR THE PROTECTION OF THE LIVES OR PROPERTY
4 OF CITIZENS OF THIS STATE RESULTING FROM AN INCREASE IN UNAUTHORIZED BORDER
5 CROSSINGS AND THE RELATED INCREASE IN DEATHS, CRIME OR PROPERTY DAMAGE, THE
6 GOVERNOR MAY MOBILIZE THE NATIONAL GUARD TO ADDRESS THE EMERGENCY BY ACTIVELY
7 PERFORMING ONLY DUTIES DIRECTLY RELATED TO BORDER SECURITY.

8 B. The adjutant general shall issue orders for mobilization, appoint
9 troop commanders and act as chief of staff to the governor. The adjutant
10 general ~~shall~~, with consent of the governor and in the name of the adjutant
11 general, SHALL issue orders designating local commanders, giving tactical and
12 administrative instructions, and defining the objectives of each mobilized
13 unit.

14 C. The civil authorities of a county or municipality requiring aid of
15 the national guard to quell any riot, insurrection or other civil disturbance
16 shall submit to the governor a written request for aid, setting forth the
17 particular object to be accomplished and the area affected. Upon receipt of
18 the request the governor may by proclamation mobilize all or any part of the
19 national guard or the unorganized militia, and the governor shall designate
20 the adjutant general or an officer of the national guard to take command of
21 the troops mobilized and to designate the troops to be used.

22 D. To request assistance of the national guard, or the unorganized
23 militia, or any part thereof in a search or rescue operation involving the
24 life or health of any person, the sheriff or other officer of a political
25 subdivision who is conducting the search or rescue operation shall by the
26 most rapid and suitable means of communication available convey the need to
27 the state director of emergency management for transmittal to the governor.
28 If the governor grants the request the sheriff or other officer ~~shall~~, within
29 two days, SHALL transmit a written confirmation of the request to the
30 governor.

31 E. If the president of the United States directs mobilization of the
32 national guard into the armed forces of the United States, the adjutant
33 general shall effect the mobilization speedily and in the manner prescribed.
34 Upon mobilization into the armed forces of the United States, the national
35 guard shall pass to federal control and shall not be subject to military laws
36 of the state until the time it reverts to control of the state.

37 Sec. 13. Title 26, chapter 2, Arizona Revised Statutes, is amended by
38 adding article 4, to read:

39 ARTICLE 4. BORDER RADAR

40 26-371. Border radar fund

41 A. THE BORDER RADAR FUND IS ESTABLISHED CONSISTING OF LEGISLATIVE
42 APPROPRIATIONS, MONIES RECEIVED FROM THE FEDERAL DEPARTMENT OF HOMELAND
43 SECURITY, GIFTS AND GRANTS TO THE FUND FOR BORDER RADAR ALONG THE SOUTHERN
44 BORDER OF ARIZONA.

1 Sec. 15. Section 41-763, Arizona Revised Statutes, is amended to read:
2 41-763. Powers and duties of the director relating to personnel
3 The director shall:
4 1. Appoint employees necessary to perform the duties prescribed by
5 this article.
6 2. Have authority for developing and administering a program of
7 personnel administration for the state service in conformance with the
8 personnel rules.
9 3. Have authority to establish such offices as may be necessary to
10 maintain an effective and economical program of personnel administration.
11 4. Have the power to deputize employees in various state agencies
12 where certain of the functions of personnel administration can be performed
13 by such deputies.
14 5. Make an annual report and recommendation to the legislature and the
15 joint legislative budget committee as provided in section 41-763.01.
16 6. Adopt rules relating to personnel and personnel administration.
17 7. Subject to legislative appropriation, have the authority to
18 contract for the services of consultants necessary to perform the annual
19 salary plan and salary plan adjustment recommendations.
20 8. Establish a mandatory program of annual personnel management
21 training for all state employees with supervisory or managerial
22 responsibility that is appropriate to the nature and scope of the employees'
23 supervisory responsibilities. The director may waive the annual mandatory
24 training on a case by case basis. The training shall include at least the
25 following subjects:
26 (a) Basic employee supervisory or managerial skills.
27 (b) Establishing employee objectives and performance measures.
28 (c) Measuring employee performance and the use of performance
29 evaluation methods.
30 (d) Employee discipline training and discipline procedures.
31 (e) Other subjects as determined by the director.
32 9. VERIFY THE AUTHORIZATION FOR EMPLOYMENT IN THE UNITED STATES OF
33 EVERY STATE EMPLOYEE AND CONTRACTORS WITH THIS STATE THROUGH THE BASIC
34 EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED
35 STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION
36 OR ITS SUCCESSOR PROGRAM. THIS PARAGRAPH APPLIES ONLY TO EMPLOYEES WHO ARE
37 HIRED AFTER THIS STATE HAS AGREED TO THE MEMORANDUM OF UNDERSTANDING THAT IS
38 REQUIRED TO PARTICIPATE IN THE PILOT PROGRAM. THE DIRECTOR SHALL ESTABLISH
39 GUIDELINES FOR AGENCIES AND BUSINESS ENTITIES THAT CONTRACT WITH THIS STATE
40 TO FOLLOW WHEN HIRING EMPLOYEES AND USING THE PILOT PROGRAM UNDER THIS
41 PARAGRAPH.

1 ATTORNEY GENERAL SHALL NOT SELECT AN EMPLOYER FOR AN AUDIT IF THAT EMPLOYER
2 WAS THE SUBJECT OF AN AUDIT WITHIN THE PRECEDING TWO YEARS, UNLESS THE
3 EMPLOYER HAS PREVIOUSLY VIOLATED THIS ARTICLE OR TITLE 23, CHAPTER 2 OR
4 UNLESS THE ATTORNEY GENERAL CAN SHOW JUST CAUSE FOR THE AUDIT. THE ATTORNEY
5 GENERAL SHALL ALSO CONDUCT AN ANNUAL AUDIT OF AT LEAST ONE STATE AGENCY AND
6 ONE POLITICAL SUBDIVISION OF THIS STATE. WHEN CONDUCTING THE AUDIT, THE
7 ATTORNEY GENERAL:

8 1. SHALL REVIEW THE SIGNED AFFIRMATION THAT THE EMPLOYER SUBMITTED
9 PURSUANT TO SECTION 41-1080.01.

10 2. SHALL REVIEW THE EMPLOYER'S COMPLIANCE WITH FEDERAL AND STATE LAWS
11 REGARDING THE PROCEDURES FOR HIRING PERSONS LAWFULLY AUTHORIZED TO BE
12 EMPLOYED IN THE UNITED STATES.

13 3. SHALL REVIEW THE COMPLETED I-9 EMPLOYMENT ELIGIBILITY FORMS THAT
14 THE EMPLOYER IS REQUIRED TO RETAIN UNDER FEDERAL LAW.

15 4. MAY VERIFY THE EMPLOYMENT AUTHORIZATION OF THE EMPLOYER'S EMPLOYEES
16 THROUGH THE BASIC PILOT PROGRAM.

17 B. FOR THE PURPOSES OF CONDUCTING AN AUDIT UNDER THIS SECTION, THE
18 ATTORNEY GENERAL MAY ISSUE A SUBPOENA AND COMPEL THE EMPLOYER TO PRODUCE
19 RECORDS RELATING TO THE AUDIT. IF AN EMPLOYER FAILS TO COMPLY WITH THE
20 SUBPOENA THE ATTORNEY GENERAL MAY BRING A CIVIL CAUSE OF ACTION TO ASSESS A
21 CIVIL PENALTY OF UP TO ONE THOUSAND DOLLARS PER DAY.

22 C. IF AN AUDIT DETERMINES THAT AN EMPLOYER KNOWINGLY EMPLOYS AN
23 UNAUTHORIZED WORKER, THE ATTORNEY GENERAL SHALL IMMEDIATELY:

24 1. ORDER THE EMPLOYER TO CEASE AND DESIST FROM EMPLOYING THE
25 UNAUTHORIZED WORKER AND TO DISCHARGE FOR CAUSE OTHER UNAUTHORIZED WORKERS WHO
26 ARE IDENTIFIED IN THE CEASE AND DESIST ORDER OR IN THE AUDIT AND WHO ARE
27 KNOWINGLY EMPLOYED BY THE EMPLOYER IN THIS STATE. THE CEASE AND DESIST ORDER
28 SHALL CONTAIN A NOTICE OF THE EMPLOYER'S RIGHTS TO CONTEST THE ORDER. THE
29 ATTORNEY GENERAL SHALL CONFIRM THAT THE EMPLOYER RECEIVED THE CEASE AND
30 DESIST ORDER BY CERTIFIED MAIL. THE EMPLOYER SHALL COMPLY WITH THE CEASE AND
31 DESIST ORDER WITHIN TEN BUSINESS DAYS AFTER THE ATTORNEY GENERAL CONFIRMS
32 THAT THE EMPLOYER RECEIVED THE ORDER, UNLESS THE EMPLOYER HAS FILED AN APPEAL
33 OF THE ATTORNEY GENERAL'S CEASE AND DESIST ORDER PURSUANT TO SUBSECTION D OF
34 THIS SECTION.

35 2. NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE
36 UNAUTHORIZED WORKER.

37 D. WITHIN TEN BUSINESS DAYS AFTER RECEIVING A CEASE AND DESIST ORDER
38 UNDER SUBSECTION C OF THIS SECTION, THE EMPLOYER MAY EITHER:

39 1. REQUEST A HEARING PURSUANT TO CHAPTER 6, ARTICLE 10 OF THIS TITLE.

40 2. SERVE A NOTICE OF CONTEST OF THE CEASE AND DESIST ORDER, IN WHICH
41 CASE THE ATTORNEY GENERAL MAY BRING AN ACTION IN SUPERIOR COURT, ADJUDICATED
42 ON A TRIAL DE NOVO BASIS, SEEKING TO ENFORCE THE CEASE AND DESIST ORDER.

43 E. IF THE EMPLOYER REQUESTS A HEARING OR SERVES A NOTICE OF CONTEST
44 PURSUANT TO SUBSECTION D OF THIS SECTION, THE CEASE AND DESIST ORDER IS NOT
45 EFFECTIVE UNTIL TEN BUSINESS DAYS AFTER THE EXPIRATION OF ANY TIME PERIOD TO

1 APPEAL FROM THE FINAL ADMINISTRATIVE DECISION OF THE OFFICE OF ADMINISTRATIVE
2 HEARINGS OR THE DECISION OF THE SUPERIOR COURT AND ANY SUBSEQUENT APPEALS.

3 F. FOR THE PURPOSES OF THIS SECTION, PROOF OF EITHER OF THE FOLLOWING
4 CIRCUMSTANCES, UNLESS SATISFACTORILY EXPLAINED, CREATES A REBUTTABLE
5 PRESUMPTION THAT AN EMPLOYER KNOWINGLY EMPLOYED AN UNAUTHORIZED WORKER:

6 1. THE EMPLOYER VIOLATED THE MINIMUM WAGE REQUIREMENTS PRESCRIBED BY
7 THE FEDERAL FAIR LABOR STANDARDS ACT FOR THE EMPLOYEE WHO IS IDENTIFIED IN
8 THE CEASE AND DESIST ORDER.

9 2. THE EMPLOYER ACCEPTS A CONSULAR IDENTIFICATION CARD THAT IS ISSUED
10 BY A FOREIGN GOVERNMENT AS A FORM OF IDENTIFICATION WHEN DETERMINING THE
11 EMPLOYEE'S IDENTITY.

12 41-1080.03. Employment of unauthorized workers; failure to
13 comply with cease and desist order; civil cause
14 of action

15 A. IF AN EMPLOYER FAILS TO COMPLY WITH THE CEASE AND DESIST ORDER
16 UNDER SECTION 41-1080.02, THE ATTORNEY GENERAL MAY BRING A CIVIL CAUSE OF
17 ACTION TO ASSESS A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS AND TO HAVE
18 THE EMPLOYER'S LICENSE SUSPENDED OR REVOKED. IF THE COURT DETERMINES THAT
19 THE EMPLOYER FAILED TO COMPLY WITH THE CEASE AND DESIST ORDER, THE COURT MAY
20 ORDER THE EMPLOYER'S LICENSE TO BE SUSPENDED OR REVOKED BASED ON THE SEVERITY
21 OF THE OFFENSE, EXCEPT THAT IF THE LICENSE IS ISSUED PURSUANT TO RULES
22 ADOPTED BY THE SUPREME COURT THE COURT SHALL REFER THE MATTER TO THE SUPREME
23 COURT TO DETERMINE WHETHER THE LICENSE SHALL BE SUSPENDED OR REVOKED. IF THE
24 COURT ORDERS AN EMPLOYER'S LICENSE TO BE SUSPENDED OR REVOKED, THE COURT
25 SHALL SUSPEND OR REVOKE THE EMPLOYER'S LICENSE IN ORDER TO PREVENT THE
26 EMPLOYER FROM CONDUCTING BUSINESS AT THE BUSINESS LOCATION WHERE THE
27 UNAUTHORIZED WORKER WHO IS IDENTIFIED IN THE CEASE AND DESIST ORDER IS
28 EMPLOYED. IF THE COURT ORDERS AN EMPLOYER'S LICENSE TO BE SUSPENDED OR
29 REVOKED PURSUANT TO THIS SECTION, THE COURT SHALL NOTIFY THE APPROPRIATE
30 AGENCY AND, NOTWITHSTANDING SECTIONS 41-1064 AND 41-1092.11, THE APPROPRIATE
31 AGENCY SHALL IMMEDIATELY SUSPEND THE EMPLOYER'S LICENSE FOR THE TIME PERIOD
32 SPECIFIED BY THE COURT OR REVOKE THE EMPLOYER'S LICENSE.

33 B. IF AN EMPLOYER HAS A LICENSE REVOKED UNDER SUBSECTION A OF THIS
34 SECTION, AN AGENCY SHALL NOT ISSUE A NEW LICENSE TO THE EMPLOYER UNTIL TWO
35 YEARS AFTER THE DATE OF REVOCATION.

36 C. THE COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION
37 A OF THIS SECTION AND REMIT THE CIVIL PENALTY TO THE SUPREME COURT, WHICH
38 SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, THE CIVIL PENALTY IN
39 THE BORDER SECURITY FUND ESTABLISHED BY SECTION 41-2351.

40 D. THIS SECTION DOES NOT REQUIRE THE COURT TO ORDER THE SUSPENSION OR
41 REVOCATION OF EVERY LICENSE THAT IS ISSUED TO THE EMPLOYER.

42 41-1080.04. State indemnification for employer actions

43 IF ANY ADMINISTRATIVE OR JUDICIAL ACTION IS BROUGHT AGAINST AN EMPLOYER
44 BY A FORMER EMPLOYEE AS A RESULT OF THE EMPLOYER'S GOOD FAITH ACTIONS IN
45 COMPLIANCE WITH THIS ARTICLE OR ANY ORDER, DETERMINATION OR NOTICE UNDER THIS

1 ARTICLE, THE STATE SHALL INDEMNIFY THE EMPLOYER AND PAY THE ACTUAL DAMAGES
2 AND COSTS, INCLUDING ATTORNEY FEES, INCURRED BY THE EMPLOYER IN THE DEFENSE
3 OF THE ADMINISTRATIVE OR JUDICIAL ACTION. THE STATE SHALL VERIFY AND PAY THE
4 AMOUNT WITHIN FORTY-FIVE DAYS AFTER THE EMPLOYER SUBMITS THE ACTUAL DAMAGES
5 AND COSTS TO THE STATE. ANY INDEMNIFICATION SHALL BE LIMITED ONLY TO ACTIONS
6 SPECIFICALLY IDENTIFIED IN THIS ARTICLE.

7 41-1080.05. Expedited consideration

8 FOR ANY ACTION UNDER THIS ARTICLE, THE COURT SHALL EXPEDITE THE ACTION,
9 INCLUDING ASSIGNING THE ACTION FOR HEARING AT THE EARLIEST PRACTICABLE DATE.

10 41-1080.06. Employer actions; federal law compliance

11 THIS ARTICLE DOES NOT REQUIRE AN EMPLOYER TO TAKE ANY ACTION THAT THE
12 EMPLOYER BELIEVES IN GOOD FAITH WOULD VIOLATE FEDERAL LAW.

13 Sec. 17. Section 41-1279.03, Arizona Revised Statutes, is amended to
14 read:

15 41-1279.03. Powers and duties

16 A. The auditor general shall:

17 1. Prepare an audit plan for approval by the committee and report to
18 the committee the results of each audit and investigation and other reviews
19 conducted by the auditor general.

20 2. Conduct or cause to be conducted at least biennial financial and
21 compliance audits of financial transactions and accounts kept by or for all
22 state agencies subject to the single audit act of 1984 (P.L. 98-502). The
23 audits shall be conducted in accordance with generally accepted governmental
24 auditing standards and accordingly shall include tests of the accounting
25 records and other auditing procedures as may be considered necessary in the
26 circumstances. The audits shall include the issuance of suitable reports as
27 required by the single audit act of 1984 (P.L. 98-502) so the legislature,
28 federal government and others will be informed as to the adequacy of
29 financial statements of the state in compliance with generally accepted
30 governmental accounting principles and to determine whether the state has
31 complied with laws and regulations that may have a material effect on the
32 financial statements and on major federal assistance programs.

33 3. Perform procedural reviews for all state agencies at times
34 determined by the auditor general. These reviews may include evaluation of
35 administrative and accounting internal controls and reports on such reviews.

36 4. Perform special research requests, special audits and related
37 assignments as designated by the committee and conduct performance audits,
38 special audits, special research requests and investigations of any state
39 agency, whether created by the constitution or otherwise, as may be requested
40 by the committee.

41 5. Annually on or before the fourth Monday of December prepare a
42 written report to the governor and to the committee which contains a summary
43 of activities for the previous fiscal year.

1 6. In the tenth year and in each fifth year thereafter in which a
2 transportation excise tax is in effect in a county as provided in section
3 42-6104, 42-6106 or 42-6107 conduct a performance audit that:

4 (a) Reviews past expenditures and future planned expenditures of the
5 transportation excise revenues and determines the impact of the expenditures
6 in solving transportation problems within the county and, for a
7 transportation excise tax in effect in a county as provided in section
8 42-6107, determines whether the expenditures of the transportation excise
9 revenues comply with section 28-6392, subsection B.

10 (b) Reviews projects completed to date and projects to be completed
11 during the remaining years in which a transportation excise tax is in effect.
12 Within six months after each review period the auditor general shall present
13 a report to the speaker of the house of representatives and the president of
14 the senate detailing findings and making recommendations. If the parameters
15 of the performance audit are set by the citizens transportation oversight
16 committee, the auditor general shall also present the report to the citizens
17 transportation oversight committee.

18 (c) Reviews, determines, reports and makes recommendations to the
19 speaker of the house of representatives and the president of the senate
20 whether the distribution of highway user revenues complies with title 28,
21 chapter 18, article 2. If the parameters of the performance audit are set by
22 the citizens transportation oversight committee, the auditor general shall
23 also present the report to the citizens transportation oversight committee.

24 7. If requested by the committee, conduct performance audits of
25 counties and incorporated cities and towns receiving highway user revenue
26 fund monies pursuant to title 28, chapter 18, article 2 to determine if the
27 monies are being spent as provided in section 28-6533, subsection B.

28 8. Perform special audits designated pursuant to law if the auditor
29 general determines that there are adequate monies appropriated for the
30 auditor general to complete the audit. If the auditor general determines the
31 appropriated monies are inadequate, the auditor general shall notify the
32 committee.

33 9. Beginning on July 1, 2001, establish a school-wide audit team in
34 the office of the auditor general to conduct performance audits and monitor
35 school districts to determine the percentage of every dollar spent in the
36 classroom by a school district. The auditor general shall determine, through
37 random selection, the school districts to be audited each year, subject to
38 review by the joint legislative audit committee. A school district that is
39 subject to an audit pursuant to this paragraph shall notify the auditor
40 general in writing as to whether the school district agrees or disagrees with
41 the findings and recommendations of the audit and whether the school district
42 will implement the findings and recommendations, implement modifications to
43 the findings and recommendations or refuse to implement the findings and
44 recommendations. The school district shall submit to the auditor general a
45 written status report on the implementation of the audit findings and

1 recommendations every six months for two years after an audit conducted
2 pursuant to this paragraph. The auditor general shall review the school
3 district's progress toward implementing the findings and recommendations of
4 the audit every six months after receipt of the district's status report for
5 two years. The auditor general may review a school district's progress
6 beyond this two-year period for recommendations that have not yet been
7 implemented by the school district. The auditor general shall provide a
8 status report of these reviews to the joint legislative audit committee. The
9 school district shall participate in any hearing scheduled during this review
10 period by the joint legislative audit committee or by any other legislative
11 committee designated by the joint legislative audit committee.

12 **10. FOR EACH AGENCY AUDIT, REVIEW OR INVESTIGATION, CONDUCT AN AUDIT**
13 **FOR ADHERENCE TO IMMIGRATION EMPLOYMENT PRACTICES OF THE AGENCY.**

14 B. The auditor general may:

15 1. Subject to approval by the committee, adopt rules necessary to
16 administer the duties of the office.

17 2. Hire consultants to conduct the studies required by subsection A,
18 paragraphs 6 and 7 of this section.

19 C. If approved by the committee the auditor general may charge a
20 reasonable fee for the cost of performing audits or providing accounting
21 services for auditing federal funds, special audits or special services
22 requested by political subdivisions of the state. Monies collected pursuant
23 to this subsection shall be deposited in the audit services revolving fund.

24 D. The department of transportation, the board of supervisors of a
25 county that has approved a county transportation excise tax as provided in
26 section 42-6104, 42-6106 or 42-6107 and the governing bodies of counties,
27 cities and towns receiving highway user revenue fund monies shall cooperate
28 with and provide necessary information to the auditor general or the auditor
29 general's consultant.

30 E. The department of transportation shall reimburse the auditor
31 general as follows, and the auditor general shall deposit the reimbursed
32 monies in the audit services revolving fund:

33 1. For the cost of conducting the studies or hiring a consultant to
34 conduct the studies required by subsection A, paragraph 6, subdivisions (a)
35 and (b) of this section, from monies collected pursuant to a county
36 transportation excise tax levied pursuant to section 42-6104, 42-6106 or
37 42-6107.

38 2. For the cost of conducting the studies or hiring a consultant
39 pursuant to subsection A, paragraph 6, subdivision (c) and paragraph 7 of
40 this section, from the Arizona highway user revenue fund.

41 Sec. 18. Title 41, chapter 7, article 12, Arizona Revised Statutes, is
42 amended by adding section 41-1292.01, to read:

43 41-1292.01. Joint legislative committee on immigration

44 **A. THE JOINT LEGISLATIVE COMMITTEE ON IMMIGRATION IS ESTABLISHED. THE**
45 **COMMITTEE CONSISTS OF:**

1 1. THREE MEMBERS OF THE SENATE WHO ARE APPOINTED BY THE PRESIDENT OF
2 THE SENATE, NO MORE THAN TWO OF WHOM ARE MEMBERS OF THE SAME POLITICAL PARTY.

3 2. THREE MEMBERS OF THE HOUSE OF REPRESENTATIVES WHO ARE APPOINTED BY
4 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, NO MORE THAN TWO OF WHOM ARE
5 MEMBERS OF THE SAME POLITICAL PARTY.

6 B. THE COMMITTEE SHALL REVIEW THE REPORTS RECEIVED FROM THE ATTORNEY
7 GENERAL PURSUANT TO SECTION 41-199 AND SHALL REVIEW THE IMPLEMENTATION AND
8 ENFORCEMENT OF THE FOLLOWING STATUTES:

9 1. ENFORCEMENT OF IMMIGRATION LAWS PURSUANT TO TITLE 11, CHAPTER 7,
10 ARTICLE 8.

11 2. TRESPASSING BY ILLEGAL ALIENS PURSUANT TO SECTION 13-1509.

12 3. SMUGGLING OF HUMAN BEINGS PURSUANT TO SECTION 13-2319.

13 4. BORDER RADAR PURSUANT TO TITLE 26, CHAPTER 2, ARTICLE 4.

14 5. ARIZONA BORDER ENFORCEMENT SECURITY TEAM PURSUANT TO CHAPTER 20 OF
15 THIS TITLE. THE COMMITTEE SHALL SPECIFICALLY REVIEW THE GRANTS THAT ARE MADE
16 PURSUANT TO CHAPTER 20 OF THIS TITLE, INCLUDING A REVIEW OF THE TOTAL NUMBER
17 OF GRANTS, THE TOTAL AMOUNT OF GRANTS AND THE USEFULNESS AND EFFECTIVENESS OF
18 THE GRANTS THAT WERE MADE.

19 6. SECURE AND VERIFIABLE IDENTIFICATION PURSUANT TO CHAPTER 41 OF THIS
20 TITLE.

21 C. THE COMMITTEE SHALL ANNUALLY MAKE RECOMMENDATIONS TO THE
22 LEGISLATURE THAT WILL SECURE THE BORDERS, PREVENT UNAUTHORIZED BORDER
23 CROSSINGS AND IMPROVE THE ENFORCEMENT OF IMMIGRATION LAWS IN THIS STATE.

24 D. THE COMMITTEE SHALL SUBMIT A REPORT WITH ITS RECOMMENDATIONS ON OR
25 BEFORE DECEMBER 1 OF EACH YEAR TO THE GOVERNOR, THE PRESIDENT OF THE SENATE
26 AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

27 E. THE COMMITTEE SHALL PROVIDE A COPY OF THE REPORT TO THE SECRETARY
28 OF STATE AND THE DIRECTOR OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC
29 RECORDS.

30 Sec. 19. Section 41-1376, Arizona Revised Statutes, is amended to
31 read:

32 41-1376. Powers and duties

33 A. The ombudsman-citizens aide shall:

34 1. Investigate the administrative acts of agencies pursuant to section
35 41-1377, subsections A and B except as provided in section 41-1377,
36 subsections C, D and E. The ombudsman-citizens aide shall investigate the
37 administrative acts of an agency without regard to the finality of the
38 administrative act.

39 2. Annually before January 1 prepare a written report to the governor,
40 the legislature and the public that contains a summary of the
41 ombudsman-citizens aide's activities during the previous fiscal year. The
42 ombudsman-citizens aide shall semiannually present this report before the
43 legislative council. This report shall include:

- 1 (a) The ombudsman-citizens aide's mission statement.
- 2 (b) The number of matters that were within each of the categories
- 3 specified in section 41-1379, subsection B.
- 4 (c) Legislative issues affecting the ombudsman-citizens aide.
- 5 (d) Selected case studies that illustrate the ombudsman-citizens
- 6 aide's work and reasons for complaints.
- 7 (e) Ombudsman-citizens aide's contact statistics.
- 8 (f) Ombudsman-citizens aide's staff.

9 3. Before conducting the first investigation, adopt rules that ensure
10 that confidential information that is gathered will not be disclosed.

11 4. Appoint a deputy ombudsman and prescribe the duties of employees
12 or, subject to appropriation, contract for the services of independent
13 contractors necessary to administer the duties of the office of
14 ombudsman-citizens aide. All staff serves at the pleasure of the
15 ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6
16 of this title. All staff shall be subject to the conflict of interest
17 provisions of title 38, chapter 3, article 8.

18 5. Before conducting the first investigation, adopt rules that
19 establish procedures for receiving and processing complaints, including
20 guidelines to ensure each complainant has exhausted all reasonable
21 alternatives within the agency, conducting investigations, incorporating
22 agency responses into recommendations and reporting findings.

23 6. Notify the chief executive or administrative officer of the agency
24 in writing of the intention to investigate unless notification would unduly
25 hinder the investigation or make the investigation ineffectual.

26 7. Appoint an assistant to help the ombudsman-citizens aide
27 investigate complaints relating to child protective services in the
28 department of economic security. The assistant shall have expertise in child
29 protective services procedures and laws. Notwithstanding any law to the
30 contrary, the ombudsman-citizens aide and the assistant have access to child
31 protective services records and to any automated case management system used
32 by child protective services in the department of economic security.

33 8. APPOINT AN IMMIGRATION OMBUDSMAN-CITIZENS AIDE WHO SHALL PROVIDE
34 IMMIGRATION INFORMATION TO EMPLOYERS PURSUANT TO SECTION 41-1384. THE
35 IMMIGRATION OMBUDSMAN-CITIZENS AIDE SERVES AT THE PLEASURE OF THE
36 OMBUDSMAN-CITIZENS AIDE.

37 B. After the conclusion of an investigation and notice to the head of
38 the agency pursuant to section 41-1379, the ombudsman-citizens aide may
39 present the ombudsman-citizens aide's opinion and recommendations to the
40 governor, the legislature, the office of the appropriate prosecutor or the
41 public, or any combination of these persons. The ombudsman-citizens aide
42 shall include in the opinion the reply of the agency, including those issues
43 that were resolved as a result of the ombudsman-citizens aide's preliminary
44 opinion or recommendation.

1 Sec. 20. Title 41, chapter 8, article 5, Arizona Revised Statutes, is
2 amended by adding section 41-1384, to read:

3 41-1384. Immigration ombudsman-citizens aide; assistance with
4 federal immigration laws and employee verification;
5 definitions

6 A. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL PROVIDE EMPLOYERS
7 WITH INFORMATION THAT HELPS EMPLOYERS TO COMPLY WITH FEDERAL IMMIGRATION
8 LAWS, TITLE 23, CHAPTER 2, ARTICLES 2 AND 2.1 AND CHAPTER 6, ARTICLE 7.2 OF
9 THIS TITLE. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL PROVIDE ASSISTANCE
10 TO EMPLOYERS TO ENROLL IN AND USE THE BASIC PILOT PROGRAM.

11 B. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL ESTABLISH A PROCEDURE
12 FOR EMPLOYERS TO REPORT CHARGES OF ILLEGAL HIRING TO THE FEDERAL IMMIGRATION
13 CUSTOMS ENFORCEMENT AGENCY.

14 C. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL ESTABLISH A PROTOCOL
15 TO INFORM EMPLOYERS OF APPROPRIATE ACTIONS TO TAKE WHEN AN EMPLOYEE'S OR
16 PROSPECTIVE EMPLOYEE'S SOCIAL SECURITY NUMBER IS IN QUESTION.

17 D. THE IMMIGRATION OMBUDSMAN-CITIZENS AIDE SHALL ASSIST COUNTY
18 SHERIFFS AND POLICE DEPARTMENTS OF CITIES AND TOWNS WHO REQUEST ASSISTANCE IN
19 COMPLETING AND ENTERING INTO A MEMORANDUM OF UNDERSTANDING WITH THE UNITED
20 STATES DEPARTMENT OF JUSTICE OR THE UNITED STATES DEPARTMENT OF HOMELAND
21 SECURITY PURSUANT TO SECTION 11-1051, SUBSECTION C.

22 E. FOR THE PURPOSES OF THIS SECTION:

23 1. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
24 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
25 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

26 2. "EMPLOYER" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION, INCLUDING
27 THIS STATE AND ALL OF ITS POLITICAL SUBDIVISIONS, THAT HAS IN ITS EMPLOY ONE
28 OR MORE INDIVIDUALS PERFORMING SERVICES FOR IT IN EMPLOYMENT AND INCLUDES
29 SELF-EMPLOYED PERSONS.

30 3. "UNAUTHORIZED WORKER" MEANS A PERSON WHO IS AN ALIEN AND WHO IS NOT
31 AUTHORIZED TO BE EMPLOYED UNDER FEDERAL LAW. FOR THE PURPOSES OF THIS
32 PARAGRAPH, "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE
33 UNITED STATES.

34 Sec. 21. Heading change

35 The article heading of title 41, chapter 12, article 1, Arizona Revised
36 Statutes, is changed from "DEFINITIONS" to "GENERAL PROVISIONS".

37 Sec. 22. Title 41, chapter 12, article 1, Arizona Revised Statutes, is
38 amended by adding section 41-1702, to read:

39 41-1702. Federal immigration laws; enforcement; memorandum;
40 program; definition

41 A. TO THE EXTENT PERMITTED BY FEDERAL LAW AND NOTWITHSTANDING ANY
42 OTHER STATE LAW, PEACE OFFICERS ARE FULLY AUTHORIZED TO INVESTIGATE OR
43 APPREHEND ILLEGAL ALIENS IN THE UNITED STATES, INCLUDING TRANSFERRING ILLEGAL
44 ALIENS TO FEDERAL LAW ENFORCEMENT AGENCIES AND TRANSPORTING ILLEGAL ALIENS

1 ACROSS STATE LINES TO DETENTION CENTERS, IN THE ENFORCEMENT OF THE
2 IMMIGRATION LAWS OF THE UNITED STATES.

3 B. THE DIRECTOR SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH
4 THE UNITED STATES DEPARTMENT OF JUSTICE OR THE UNITED STATES DEPARTMENT OF
5 HOMELAND SECURITY TO DESIGNATE OFFICERS AS IMMIGRATION OFFICERS QUALIFIED TO
6 INVESTIGATE, APPREHEND AND DETAIN ILLEGAL ALIENS IN THE UNITED STATES TO THE
7 FULLEST EXTENT CONSISTENT WITH STATE AND FEDERAL LAW.

8 C. THE DIRECTOR SHALL IMPLEMENT A PROGRAM TO TRAIN PEACE OFFICERS TO
9 INVESTIGATE VIOLATIONS OF FEDERAL IMMIGRATION LAWS.

10 D. THE REQUIREMENTS AND OBLIGATIONS OF THIS SECTION SHALL BE
11 IMPLEMENTED IN A MANNER FULLY CONSISTENT WITH FEDERAL LAW REGULATING
12 IMMIGRATION AND PROTECTING THE CIVIL RIGHTS OF CITIZENS AND ALIENS.

13 E. FOR THE PURPOSES OF THIS SECTION, "PEACE OFFICER" HAS THE SAME
14 MEANING PRESCRIBED IN SECTION 13-105.

15 Sec. 23. Title 41, Arizona Revised Statutes, is amended by adding
16 chapter 20, to read:

17 CHAPTER 20

18 ARIZONA BORDER ENFORCEMENT SECURITY TEAM

19 ARTICLE 1. GENERAL PROVISIONS

20 41-2351. Arizona border enforcement security team; members;
21 powers and duties; fund; limitation

22 A. THE ARIZONA BORDER ENFORCEMENT SECURITY TEAM IS ESTABLISHED
23 CONSISTING OF THE FOLLOWING MEMBERS:

24 1. THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY OR THE DIRECTOR'S
25 DESIGNEE.

26 2. ONE MEMBER OF THE HOUSE OF REPRESENTATIVES WHO IS APPOINTED BY THE
27 SPEAKER OF THE HOUSE OF REPRESENTATIVES.

28 3. ONE MEMBER OF THE SENATE WHO IS APPOINTED BY THE PRESIDENT OF THE
29 SENATE.

30 4. ONE MEMBER OF THE PUBLIC WHO IS APPOINTED BY THE SPEAKER OF THE
31 HOUSE OF REPRESENTATIVES.

32 5. ONE MEMBER OF THE PUBLIC WHO IS APPOINTED BY THE PRESIDENT OF THE
33 SENATE.

34 6. ONE MUNICIPAL LAW ENFORCEMENT MEMBER WHO IS APPOINTED BY THE
35 ARIZONA ASSOCIATION OF CHIEFS OF POLICE FROM A SOUTHERN ARIZONA BORDER CITY.

36 7. TWO COUNTY LAW ENFORCEMENT MEMBERS WHO ARE APPOINTED BY THE ARIZONA
37 COUNTY SHERIFFS ASSOCIATION, ONE OF WHOM SHALL BE FROM A COUNTY WITH A
38 POPULATION OF MORE THAN ONE MILLION FIVE HUNDRED THOUSAND PERSONS AND ONE OF
39 WHOM SHALL BE FROM A SOUTHERN ARIZONA BORDER COUNTY.

40 8. ONE CITY PROSECUTOR WHO IS APPOINTED BY THE ARIZONA PROSECUTING
41 ATTORNEYS ADVISORY COUNCIL.

42 9. TWO COUNTY ATTORNEYS WHO ARE APPOINTED BY THE ARIZONA PROSECUTING
43 ATTORNEYS ADVISORY COUNCIL, ONE OF WHOM SHALL BE FROM A COUNTY WITH A
44 POPULATION OF MORE THAN ONE MILLION FIVE HUNDRED THOUSAND PERSONS.

- 1 B. MEMBERS SERVE AT THE PLEASURE OF THE APPOINTING OFFICER AND, IN THE
2 CASE OF ELECTED OFFICIALS, UNTIL THEIR ELECTIVE TERM OF OFFICE EXPIRES.
- 3 C. MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 4 THROUGH 9
4 OF THIS SECTION SHALL SERVE STAGGERED THREE YEAR TERMS.
- 5 D. MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 2 AND 3 OF
6 THIS SECTION SHALL SERVE AS ADVISORY NONVOTING MEMBERS AND ARE NOT MEMBERS
7 FOR PURPOSES OF DETERMINING WHETHER A QUORUM IS PRESENT.
- 8 E. THE VOTING MEMBERS SHALL ANNUALLY ELECT A CHAIRPERSON FROM AMONG
9 THE MEMBERS AND A MEMBER SHALL NOT SERVE CONSECUTIVE TERMS AS CHAIRPERSON.
- 10 F. MEMBERS ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT VOTING MEMBERS
11 ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4,
12 ARTICLE 2.
- 13 G. THE TEAM MAY USE THE STAFF OF THE DEPARTMENT OF EMERGENCY AND
14 MILITARY AFFAIRS AND THE DEPARTMENT'S FACILITIES FOR MEETINGS.
- 15 H. THE TEAM MAY ENTER INTO INTERAGENCY AGREEMENTS FOR TEAM BUSINESS.
- 16 I. THE TEAM SHALL:
- 17 1. AFTER REVIEW BY THE JOINT LEGISLATIVE BUDGET COMMITTEE, MAKE GRANTS
18 FROM ONE-HALF OF THE MONIES IN THE BORDER SECURITY FUND ESTABLISHED BY
19 SUBSECTION K OF THIS SECTION TO COUNTIES FOR INCARCERATION OPERATING
20 EXPENSES, INCLUDING TEMPORARY AND MOVABLE DETAINMENT FACILITIES, TENTS FOR
21 IMMIGRATION CONTROL AND OPERATING AND PERSONNEL COSTS FOR THE DETAINMENT
22 FACILITIES.
- 23 2. AFTER REVIEW BY THE JOINT LEGISLATIVE BUDGET COMMITTEE, MAKE GRANTS
24 FROM ONE-HALF OF THE MONIES IN THE BORDER SECURITY FUND ESTABLISHED BY
25 SUBSECTION K OF THIS SECTION TO CITY, TOWN AND COUNTY LAW ENFORCEMENT
26 AGENCIES, CITY AND TOWN PROSECUTORS AND COUNTY ATTORNEYS FOR BORDER SECURITY
27 PERSONNEL, PHYSICAL BARRIERS AND ANY OTHER IMMIGRATION ENFORCEMENT PURPOSES.
28 THE TEAM MAY ALSO MAKE A GRANT TO THE DEPARTMENT OF TRANSPORTATION TO
29 CONSTRUCT AN UNPAVED SOUTHERN ARIZONA BORDER ROAD. THE DEPARTMENT OF
30 TRANSPORTATION MAY WORK IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS TO
31 CONSTRUCT THE ROAD.
- 32 3. RECEIVE QUARTERLY REPORTS FROM THE ENTITIES RECEIVING GRANTS AND
33 EVALUATE THEIR EFFECTIVENESS.
- 34 4. ON OR BEFORE DECEMBER 1 OF EACH YEAR, SUBMIT TO THE GOVERNOR, THE
35 PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
36 JOINT LEGISLATIVE BUDGET COMMITTEE A WRITTEN REPORT ON THE EFFECTIVENESS OF
37 THE GRANTS PROVIDED AND PROVIDE A COPY OF THIS REPORT TO THE SECRETARY OF
38 STATE AND THE DIRECTOR OF THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC
39 RECORDS.
- 40 J. THE TEAM SHALL NOT MAKE GRANTS TO ANY CITY, TOWN OR COUNTY THAT IS
41 NOT IN FULL COMPLIANCE WITH SECTION 11-1051, OR THAT HAS ANY SANCTUARY POLICY
42 INVOLVING ANY FORM OF AID TO ILLEGAL ALIENS OR ANY REDUCED ENFORCEMENT OF
43 ILLEGAL IMMIGRATION, AS DETERMINED BY THE TEAM.
- 44 K. THE BORDER SECURITY FUND IS ESTABLISHED CONSISTING OF CIVIL
45 PENALTIES DEPOSITED PURSUANT TO SECTIONS 13-1509, 23-215, 23-222 AND

1 41-1080.03, LEGISLATIVE APPROPRIATIONS, GIFTS AND GRANTS. THE TEAM SHALL
2 ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND
3 ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF
4 APPROPRIATIONS. ON NOTICE FROM THE TEAM, THE STATE TREASURER SHALL INVEST
5 AND DIVEST MONIES IN THE FUND AS PROVIDED IN SECTION 35-313, AND MONIES
6 EARNED FROM INVESTMENTS SHALL BE CREDITED TO THE FUND.

7 Sec. 24. Title 41, chapter 27, article 2, Arizona Revised Statutes, is
8 amended by adding section 41-3016.01, to read:

9 41-3016.01. Arizona border enforcement security team;
10 termination July 1, 2016

11 A. THE ARIZONA BORDER ENFORCEMENT SECURITY TEAM TERMINATES ON JULY 1,
12 2016.

13 B. TITLE 41, CHAPTER 20 IS REPEALED ON JANUARY 1, 2017.

14 Sec. 25. Title 41, Arizona Revised Statutes, is amended by adding
15 chapter 41, to read:

16 CHAPTER 41

17 SECURE AND VERIFIABLE IDENTIFICATION

18 ARTICLE 1. GENERAL PROVISIONS

19 41-4251. Identification requirements; exceptions; consequences;
20 definitions

21 A. FOR THE DISBURSEMENT OF PUBLIC SERVICES, INCLUDING LAW ENFORCEMENT
22 SERVICES, IN THIS STATE THAT REQUIRE RECIPIENTS TO PRODUCE IDENTIFICATION, A
23 DEPARTMENT, AGENCY, COMMISSION, BOARD OR DISTRICT OF THIS STATE OR A
24 POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ACCEPT OR RECOGNIZE ANY
25 IDENTIFICATION DOCUMENT UNLESS THE DOCUMENT WAS ISSUED BY A POLITICAL
26 SUBDIVISION OF THIS STATE, A FEDERALLY RECOGNIZED INDIAN TRIBE OR A STATE OR
27 FEDERAL AUTHORITY AND IS VERIFIABLE BY A LAW ENFORCEMENT OR HOMELAND SECURITY
28 AGENCY. LAW ENFORCEMENT SERVICES SHALL NOT BE WITHHELD BECAUSE OF THE
29 PRESENTATION OF AN UNVERIFIABLE IDENTIFICATION DOCUMENT, BUT THE UNVERIFIABLE
30 DOCUMENT CANNOT BE USED TO ESTABLISH IDENTITY. A POLITICAL SUBDIVISION OF
31 THIS STATE SHALL NOT AUTHORIZE ACCEPTANCE OF AN UNVERIFIABLE IDENTIFICATION
32 DOCUMENT AND A PUBLIC OFFICIAL ACTING IN THE CAPACITY OF A PUBLIC OFFICIAL
33 SHALL NOT ACCEPT, ACKNOWLEDGE OR RECOGNIZE ANYTHING OTHER THAN A VERIFIABLE
34 IDENTIFICATION DOCUMENT. FOR THE PURPOSE OF ISSUING ANY FORM OF
35 IDENTIFICATION, LICENSE, PERMIT OR OFFICIAL DOCUMENT TO ANY PERSON, A
36 POLITICAL SUBDIVISION OF THIS STATE SHALL NOT RELY ON, OR USE IN ANY MANNER,
37 ANY DOCUMENT OTHER THAN A VERIFIABLE IDENTIFICATION DOCUMENT.

38 B. AN EXCEPTION TO THIS SECTION SHALL BE MADE ONLY AS REQUIRED BY
39 TREATY OR FEDERAL LAW OR FOR THE PURPOSE OF REPORTING A CRIME. AN ACTION
40 THAT IS KNOWINGLY TAKEN AND THAT IS INCONSISTENT WITH THIS SECTION IS DEEMED
41 TO BE OUTSIDE OF THE OFFICIAL CAPACITY OF THE AGENCY, OFFICER, ELECTED
42 OFFICIAL, AGENT OR EMPLOYEE AND IS NOT PROTECTED BY GOVERNMENTAL IMMUNITY.

43 C. FOR THE PURPOSES OF THIS ARTICLE:

44 1. "LAW ENFORCEMENT AGENCY" MEANS ANY LAW ENFORCEMENT OR INTELLIGENCE
45 AGENCY, DEPARTMENT OR AUTHORITY OF THE UNITED STATES GOVERNMENT, A STATE

1 GOVERNMENT OR A POLITICAL SUBDIVISION OF THE UNITED STATES GOVERNMENT OR A
2 STATE GOVERNMENT.

3 2. "PUBLIC SERVICES" MEANS SERVICES FUNDED IN WHOLE OR IN PART BY
4 STATE OR LOCAL TAX REVENUES.

5 3. "VERIFIABLE" MEANS THAT THE ISSUANCE OF A DOCUMENT BY THE ISSUING
6 AGENCY TO THE INDIVIDUAL NAMED ON THE DOCUMENT IS CAPABLE OF BEING CONFIRMED
7 ON REQUEST BY A UNITED STATES LAW ENFORCEMENT AGENCY.

8 Sec. 26. Section 43-1021, Arizona Revised Statutes, as amended by Laws
9 2006, chapter 76, section 5, is amended to read:

10 43-1021. Additions to Arizona gross income

11 In computing Arizona adjusted gross income, the following amounts shall
12 be added to Arizona gross income:

13 1. A beneficiary's share of the fiduciary adjustment to the extent
14 that the amount determined by section 43-1333 increases the beneficiary's
15 Arizona gross income.

16 2. An amount equal to the "ordinary income portion" of a lump sum
17 distribution that was excluded from federal adjusted gross income pursuant to
18 section 402(d) of the internal revenue code.

19 3. The amount of interest income received on obligations of any state,
20 territory or possession of the United States, or any political subdivision
21 thereof, located outside the state of Arizona, reduced, for tax years
22 beginning from and after December 31, 1996, by the amount of any interest on
23 indebtedness and other related expenses that were incurred or continued to
24 purchase or carry those obligations and that are not otherwise deducted or
25 subtracted in arriving at Arizona gross income.

26 4. Annuity income received during the taxable year to the extent that
27 the sum of the proceeds received from such annuity in all taxable years prior
28 to and including the current taxable year exceeds the total consideration and
29 premiums paid by the taxpayer. This paragraph applies only to those
30 annuities with respect to which the first payment was received prior to
31 December 31, 1978.

32 5. The excess of a partner's share of partnership taxable income
33 required to be included under chapter 14, article 2 of this title over the
34 income required to be reported under section 702(a)(8) of the internal
35 revenue code.

36 6. The excess of a partner's share of partnership losses determined
37 pursuant to section 702(a)(8) of the internal revenue code over the losses
38 allowable under chapter 14, article 2 of this title.

39 7. The amount by which the adjusted basis of property described in
40 this paragraph and computed pursuant to the internal revenue code exceeds the
41 adjusted basis of such property computed pursuant to this title and the
42 income tax act of 1954, as amended. This paragraph shall apply to all
43 property which is held for the production of income and which is sold or
44 otherwise disposed of during the taxable year, except depreciable property
45 used in a trade or business.

1 8. The amount of depreciation or amortization of costs of any capital
2 investment that is deducted pursuant to section 167 or 179 of the internal
3 revenue code by a qualified defense contractor with respect to which an
4 election is made to amortize pursuant to section 43-1024.

5 9. The amount of gain from the sale or other disposition of a capital
6 investment which a qualified defense contractor has elected to amortize
7 pursuant to section 43-1024.

8 10. Amounts withdrawn from the Arizona state retirement system, the
9 corrections officer retirement plan, the public safety personnel retirement
10 system, the elected officials' retirement plan or a county or city retirement
11 plan by an employee upon termination of employment before retirement to the
12 extent they were deducted in arriving at Arizona taxable income in any year.

13 11. That portion of the net operating loss included in federal adjusted
14 gross income which has already been taken as a net operating loss for Arizona
15 purposes or which is separately taken as a subtraction under the special net
16 operating loss transition rule.

17 12. Any nonitemized amount deducted pursuant to section 170 of the
18 internal revenue code representing contributions to an educational
19 institution which denies admission, enrollment or board and room
20 accommodations on the basis of race, color or ethnic background except those
21 institutions primarily established for the education of American Indians.

22 13. The amount paid as taxes on property in this state with respect to
23 which a credit is claimed under section 43-1078.

24 14. Amounts withdrawn from a medical savings account by the individual
25 during the taxable year computed pursuant to section 220(f) of the internal
26 revenue code and not included in federal adjusted gross income.

27 15. Any amount of agricultural water conservation expenses that were
28 deducted pursuant to the internal revenue code for which a credit is claimed
29 under section 43-1084.

30 16. The amount by which the depreciation or amortization computed under
31 the internal revenue code with respect to property for which a credit was
32 taken under section 43-1080 exceeds the amount of depreciation or
33 amortization computed pursuant to the internal revenue code on the Arizona
34 adjusted basis of the property.

35 17. The amount by which the adjusted basis computed under the internal
36 revenue code with respect to property for which a credit was claimed under
37 section 43-1080 and which is sold or otherwise disposed of during the taxable
38 year exceeds the adjusted basis of the property computed under section
39 43-1080.

40 18. The amount by which the depreciation or amortization computed under
41 the internal revenue code with respect to property for which a credit was
42 taken under either section 43-1081 or 43-1081.01 exceeds the amount of
43 depreciation or amortization computed pursuant to the internal revenue code
44 on the Arizona adjusted basis of the property.

1 19. The amount by which the adjusted basis computed under the internal
2 revenue code with respect to property for which a credit was claimed under
3 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise
4 disposed of during the taxable year exceeds the adjusted basis of the
5 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as
6 applicable.

7 20. The deduction referred to in section 1341(a)(4) of the internal
8 revenue code for restoration of a substantial amount held under a claim of
9 right.

10 21. The amount by which a net operating loss carryover or capital loss
11 carryover allowable pursuant to section 1341(b)(5) of the internal revenue
12 code exceeds the net operating loss carryover or capital loss carryover
13 allowable pursuant to section 43-1029, subsection F.

14 22. Any amount deducted pursuant to section 170 of the internal revenue
15 code representing contributions to a school tuition organization or a public
16 school for which a credit is claimed under section 43-1089 or 43-1089.01.

17 23. Any amount deducted in computing Arizona gross income as expenses
18 for installing solar stub outs or electric vehicle recharge outlets in this
19 state with respect to which a credit is claimed pursuant to section 43-1090.

20 24. Any wage expenses deducted pursuant to the internal revenue code
21 for which a credit is claimed under section 43-1087 and representing net
22 increases in qualified employment positions for employment of temporary
23 assistance for needy families recipients.

24 25. Any amount deducted for conveying ownership or development rights
25 of property to an agricultural preservation district under section 48-5702
26 for which a credit is claimed under section 43-1081.02.

27 26. The amount of any depreciation allowance allowed pursuant to
28 section 167(a) of the internal revenue code to the extent not previously
29 added.

30 27. With respect to property for which an expense deduction was taken
31 pursuant to section 179 of the internal revenue code, the amount in excess of
32 twenty-five thousand dollars.

33 28. The amount of any deductions that are claimed in computing federal
34 adjusted gross income representing expenses for which a credit is claimed
35 under section 43-1075.

36 29. The amount by which the depreciation or amortization computed under
37 the internal revenue code with respect to property for which a credit was
38 taken under section 43-1090.01 exceeds the amount of depreciation or
39 amortization computed pursuant to the internal revenue code on the Arizona
40 adjusted basis of the property.

41 30. The amount by which the adjusted basis computed under the internal
42 revenue code with respect to property for which a credit was claimed under
43 section 43-1090.01 and which is sold or otherwise disposed of during the
44 taxable year exceeds the adjusted basis of the property computed under
45 section 43-1090.01.

1 31. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN
2 UNAUTHORIZED WORKER WHO IS KNOWINGLY HIRED BY THE TAXPAYER AND THAT IS
3 DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION 162 OF THE INTERNAL REVENUE
4 CODE. FOR THE PURPOSES OF THIS PARAGRAPH:

5 (a) "UNAUTHORIZED WORKER" MEANS A PERSON WHO IS AN ALIEN AND WHO IS
6 NOT AUTHORIZED TO BE EMPLOYED UNDER FEDERAL LAW.

7 (b) "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE
8 UNITED STATES.

9 Sec. 27. Section 46-801, Arizona Revised Statutes, is amended to read:

10 46-801. Definitions

11 In this chapter, unless the context otherwise requires:

12 1. "Caretaker relative" means a relative who exercises responsibility
13 for the day-to-day physical care, guidance and support of a child who
14 physically resides with the relative and who is by affinity or consanguinity
15 or by court decree a grandparent, great-grandparent, sibling of the whole or
16 half blood, stepbrother, stepsister, aunt, uncle, great-aunt, great-uncle or
17 first cousin.

18 2. "Cash assistance" has the same meaning prescribed in section
19 46-101.

20 3. "Child" means a person who is under thirteen years of age.

21 4. "Child care" means the compensated service that is provided to a
22 child who is unaccompanied by a parent or guardian during a portion of a
23 twenty-four hour day.

24 5. "Child care assistance" means any money payments for child care
25 services that are paid by the department and that are paid for the benefit of
26 an eligible family.

27 6. "Child care home provider" means a person who is at least eighteen
28 years of age, who is not the parent, guardian, caretaker relative or
29 noncertified relative provider of a child needing child care and who is
30 certified by the department to care for four or fewer children for
31 compensation with child care assistance monies.

32 7. "Child care providers" means child care facilities licensed
33 pursuant to title 36, chapter 7.1, article 1, child care group homes
34 certified pursuant to title 36, chapter 7.1, article 4, child care home
35 providers, in-home providers, noncertified relative providers and regulated
36 child care on military installations or for federally recognized Indian
37 tribes.

38 8. "Eligible family" means CITIZENS OR LEGAL RESIDENTS OF THE UNITED
39 STATES OR INDIVIDUALS WHO ARE OTHERWISE LAWFULLY PRESENT IN THE UNITED STATES
40 AND WHO ARE parents, legal guardians or caretaker relatives with legal
41 residence in this state and children in their care who meet the eligibility
42 requirements for child care assistance.

43 9. "Federal poverty level" means the poverty guidelines that are
44 issued by the United States department of health and human services pursuant

1 to section 673(2) of the omnibus budget reconciliation act of 1981 and that
2 are reported annually in the federal register.

3 10. "In-home provider" means a provider who is certified by the
4 department to care for a child of an eligible family in the child's own home
5 and is compensated with child care assistance monies.

6 11. "Noncertified relative provider" means a person who is at least
7 eighteen years of age, who provides child care services to an eligible child,
8 who is by affinity or consanguinity or by court decree the grandparent,
9 great-grandparent, sibling not residing in the same household, aunt,
10 great-aunt, uncle or great-uncle of the eligible child and who meets the
11 department's requirements to be a noncertified relative provider.

12 12. "Parent" or "parents" means the natural or adoptive parents of a
13 child.

14 Sec. 28. Section 46-803, Arizona Revised Statutes, is amended to read:
15 46-803. Eligibility for child care assistance

16 A. The department shall provide child care assistance to eligible
17 families who are attempting to achieve independence from the cash assistance
18 program and who need child care assistance in support of and as specified in
19 their personal responsibility agreement pursuant to chapters 1 and 2 of this
20 title.

21 B. The department shall provide child care assistance to eligible
22 families who are transitioning off of cash assistance due to increased
23 earnings or child support income in order to accept or maintain employment.
24 Eligible families must request this assistance within six months after the
25 cash assistance case closure. Child care assistance may be provided for up
26 to twenty-four months after the case closure and shall cease whenever the
27 family income exceeds one hundred sixty-five per cent of the federal poverty
28 level.

29 C. The department shall provide child care assistance to eligible
30 families who are diverted from cash assistance pursuant to section 46-298 in
31 order to obtain or maintain employment. Child care assistance may be
32 provided for up to twenty-four months after the case closure and shall cease
33 whenever the family income exceeds one hundred sixty-five per cent of the
34 federal poverty level.

35 D. The department may provide child care assistance to support
36 eligible families with incomes of one hundred sixty-five per cent or less of
37 the federal poverty level to accept or maintain employment. Priority for
38 this child care assistance shall be given to families with incomes of one
39 hundred per cent or less of the federal poverty level.

40 E. The department may provide child care assistance to families
41 referred by child protective services and to children in foster care pursuant
42 to title 8, chapter 5 to support child protection.

43 F. The department may provide child care assistance to special
44 circumstance families whose incomes are one hundred sixty-five per cent or
45 less of the federal poverty level and who are unable to provide child care

1 for a portion of a twenty-four hour day due to a crisis situation of domestic
2 violence or homelessness, or a physical, mental, emotional or medical
3 condition, participation in a drug treatment or drug rehabilitation program
4 or court ordered community restitution. Priority for this child care
5 assistance shall be given to families with incomes of one hundred per cent or
6 less of the federal poverty level.

7 G. In lieu of the employment activity required in subsection B, C or D
8 of this section, the department may allow eligible families with teenaged
9 custodial parents under twenty years of age to complete a high school diploma
10 or its equivalent or engage in remedial education activities reasonably
11 related to employment goals.

12 H. The department may provide supplemental child care assistance for
13 department approved education and training activities if the eligible parent,
14 legal guardian or caretaker relative is working at least a monthly average of
15 twenty hours per week and this education and training are reasonably related
16 to employment goals. The eligible parent, legal guardian or caretaker
17 relative must demonstrate satisfactory progress in the education or training
18 activity.

19 I. Beginning March 12, 2003, the department shall establish waiting
20 lists for child care assistance and prioritize child care assistance for
21 different eligibility categories in order to manage within appropriated and
22 available monies. Priority of children on the waiting list shall start with
23 those families at one hundred per cent of the federal poverty level and
24 continue with each successive ten per cent increase in the federal poverty
25 level until the maximum allowable federal poverty level of one hundred
26 sixty-five per cent. Priority shall be given regardless of time spent on the
27 waiting list.

28 J. The department shall establish criteria for denying, reducing or
29 terminating child care assistance that include:

30 1. Whether there is a parent, legal guardian or caretaker relative
31 available to care for the child.

32 2. Financial or programmatic eligibility changes or ineligibility.

33 3. Failure to cooperate with the requirements of the department to
34 determine or redetermine eligibility.

35 4. Hours of child care need that fall within the child's compulsory
36 academic school hours.

37 5. Reasonably accessible and available publicly funded early childhood
38 education programs.

39 6. Whether an otherwise eligible family has been sanctioned and cash
40 assistance has been terminated pursuant to chapter 2 of this title.

41 7. Other circumstances of a similar nature.

42 8. Whether sufficient monies exist for the assistance.

43 K. Families receiving child care assistance under subsection D or F of
44 this section are also subject to the following requirements for such child
45 care assistance:

1 1. Each child is limited to no more than sixty cumulative months of
2 child care assistance. The department may provide an extension if the family
3 can prove that the family is making efforts to improve skills and move
4 towards self-sufficiency.

5 2. Families are limited to no more than six children receiving child
6 care assistance.

7 3. Copayments shall be imposed for all children receiving child care
8 assistance. Copayments for each child may be higher for the first child in
9 child care than for additional children in child care.

10 L. The department shall review each case at least once a year to
11 evaluate eligibility for child care assistance.

12 M. THE DEPARTMENT SHALL REPORT ON DECEMBER 31 AND JUNE 30 OF EACH YEAR
13 TO THE JOINT LEGISLATIVE BUDGET COMMITTEE THE TOTAL NUMBER OF FAMILIES WHO
14 APPLIED FOR CHILD CARE ASSISTANCE AND THE TOTAL NUMBER OF FAMILIES WHO WERE
15 DENIED ASSISTANCE UNDER THIS SECTION BECAUSE THE PARENTS, LEGAL GUARDIANS OR
16 CARETAKER RELATIVES WHO APPLIED FOR ASSISTANCE WERE NOT CITIZENS OR LEGAL
17 RESIDENTS OF THE UNITED STATES OR WERE NOT OTHERWISE LAWFULLY PRESENT IN THE
18 UNITED STATES.

19 N. THIS SECTION SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION,
20 GENDER, ETHNICITY OR NATIONAL ORIGIN.

21 ~~M.~~ O. Notwithstanding section 35-173, monies appropriated for the
22 purposes of this section shall not be used for any other purpose without the
23 approval of the joint legislative budget committee.

24 ~~N.~~ P. The department shall refer all child care subsidy recipients to
25 child support enforcement and to local workforce services and provide
26 information on the earned income tax credit.

27 Sec. 29. Appropriation; immigration ombudsman-citizens aide;
28 exemption; reimbursement

29 A. The sum of \$100,000 and one FTE position is appropriated from the
30 state general fund in fiscal year 2006-2007 to the ombudsman-citizens aide
31 for the purpose of the immigration ombudsman-citizens aide pursuant to
32 section 41-1384, Arizona Revised Statutes, as added by this act.

33 B. The appropriation made in subsection A of this section is exempt
34 from the provisions of section 35-190, Arizona Revised Statutes, relating to
35 lapsing of appropriations.

36 C. Any federal monies provided to this state for the immigration
37 ombudsman-citizens aide shall be used to offset the appropriation made in
38 subsection A of this section and the offset amount reverts to the state
39 general fund.

40 Sec. 30. Appropriations; purposes; reports; billing; exemption;
41 reimbursement

42 A. The following sums are appropriated from the state general fund to
43 the border security fund established by section 41-2351, Arizona Revised
44 Statutes, as added by this act, in fiscal year 2006-2007 for the purposes
45 indicated:

1 1. \$27,000,000 for grants to counties for incarceration operating
2 expenses, including temporary and movable detainment facilities, tents for
3 immigration control and operating and personnel costs for the detainment
4 facilities.

5 2. \$27,000,000 for grants to city, town and county law enforcement
6 agencies, city and town prosecutors and county attorneys for border security
7 personnel, physical barriers and any other immigration enforcement purposes.

8 3. \$850,000 for grants to the state department of corrections and
9 county sheriffs for border clean-up restoration costs.

10 4. \$1,000,000 for grants to the department of transportation to
11 construct a southern Arizona border road.

12 B. The department of administration shall send billing invoices to the
13 federal government to recover the amount of the appropriations in subsection
14 A of this section for deposit in the state general fund.

15 C. The appropriations made in subsection A of this section are exempt
16 from the provisions of section 35-190, Arizona Revised Statutes, relating to
17 lapsing of appropriations.

18 D. Any federal monies provided to this state for the purposes
19 described in subsection A of this section shall be used to offset the
20 appropriations made in subsection A of this section and the offset amount
21 reverts to the state general fund.

22 Sec. 31. Appropriation; attorney general enforcement;
23 exemption; reimbursemenet

24 A. The sum of \$2,000,000 is appropriated from the state general fund
25 in fiscal year 2006-2007 to the attorney general for the purpose of enforcing
26 sections 23-214, 23-215, 23-222, 41-1080.01, 41-1080.02 and 41-1080.03,
27 Arizona Revised Statutes, as added by this act.

28 B. The appropriation made in subsection A of this section is exempt
29 from the provisions of section 35-190, Arizona Revised Statutes, relating to
30 lapsing of appropriations.

31 C. Any federal monies provided to this state for attorney general
32 enforcement shall be used to offset the appropriation made in subsection A of
33 this section and the offset amount reverts to the state general fund.

34 Sec. 32. Appropriation; department of public safety; southern
35 Arizona crime laboratory; exemption; reimbursement

36 A. The sum of \$14,300,000 is appropriated from the state general fund
37 in fiscal year 2006-2007 to the department of public safety for establishment
38 of a southern Arizona crime laboratory.

39 B. The appropriation made in subsection A of this section is exempt
40 from the provisions of section 35-190, Arizona Revised Statutes, relating to
41 lapsing of appropriations.

42 C. Any federal monies provided to this state for establishing a
43 southern Arizona crime laboratory shall be used to offset the appropriation
44 made in subsection A of this section and the offset amount reverts to the
45 state general fund.

1 Sec. 35. Border radar; implementation

2 A. The department of emergency and military affairs shall lease or
3 purchase a ground based radar system integrated with cameras for the southern
4 Arizona border for border protection. The location and implementation of the
5 radar system shall be established by the department of emergency and military
6 affairs in cooperation and consultation with the contractor and federal,
7 state and local governments, Indian tribes and private property owners on the
8 border. The contract shall require immediate notification to the United
9 States border patrol by the implementing contractor for each illegal crossing
10 of the border detected by the radar.

11 B. The department of emergency and military affairs shall:

12 1. Submit a draft of the request for proposals to the joint committee
13 on capital review within ninety days after the effective date of this act for
14 review.

15 2. Enter into a contract with the contractor for installation,
16 management and maintenance costs and personnel and associated equipmenet
17 costs of the project within one hundred twenty days after the release of the
18 request for proposals. The contract shall contain a list including the number
19 of proposed radar facility locations, the miles of border covered by the
20 proposed radar facility locations and the estimated time for completion of
21 the first and last radar sites.

22 3. Submit quarterly reports beginning December 1, 2006, until
23 completion of the project, to the joint committee on capital review and the
24 joint legislative committee on immigration for review. The reports shall
25 detail expenditures, progress on implementation of the project and the
26 timeframes for completion of the first and last radar facility locations.

27 Sec. 36. Initial terms of members of the Arizona border
28 enforcement security team

29 A. Notwithstanding section 41-2351, Arizona Revised Statutes, as added
30 by this act, the initial terms of members of the Arizona border enforcement
31 security team appointed pursuant to section 41-2351, subsection A, paragraphs
32 4 through 9, Arizona Revised Statutes, as added by this act, are:

- 33 1. Two terms ending January 1, 2008.
34 2. Three terms ending January 1, 2009.
35 3. Three terms ending January 1, 2010.

36 B. The appointing authorities shall make all subsequent appointments
37 as prescribed by statute.

38 Sec. 37. Purpose

39 Pursuant to section 41-2955, subsection E, Arizona Revised Statutes,
40 the purpose of the Arizona border enforcement security team is to make grants
41 to political subdivisions for border security.

42 Sec. 38. Report by governor; border emergency

43 A. If the governor declares that a state of emergency exists due to
44 the increase in unauthorized border crossings and the related increase in
45 deaths, crime or property damage, the governor shall prepare a report

1 outlining the governor's plan to stabilize the emergency. The report shall
2 include all of the following:

- 3 1. The number of troops to be mobilized to address the emergency.
- 4 2. The role of the troops in resolving the emergency, including
5 delineation of specific duties that will prevent illegal aliens from entering
6 Arizona.
- 7 3. The estimated time until the emergency is resolved.
- 8 4. Whether the required training schedule for national guard troops
9 prescribed in section 26-171, Arizona Revised Statutes, can be altered to use
10 these troops to address the border emergency and to reduce the cost to the
11 state.
- 12 5. Whether the governor has determined that the national guard does
13 not have sufficient troops to meet the emergency and plans to authorize the
14 adjutant general to accept service from volunteers to form an unorganized
15 militia pursuant to section 26-124, Arizona Revised Statutes, and the reasons
16 to support or reject this service.

17 B. The governor shall present this report to the speaker of the house
18 of representatives and the president of the senate within thirty days after
19 the declaration of the emergency or by the effective date of this act,
20 whichever date is later.

21 Sec. 39. Conditional appropriation; national guard
22 mobilization; exemption; reimbursement

23 A. If the governor presents the report as prescribed in section 38 of
24 this act, the sum of \$10,000,000 is appropriated from the state general fund
25 in fiscal year 2006-2007 to the department of emergency and military affairs
26 for payment of expenses incurred by the national guard pursuant to any
27 mobilization due to a declaration of emergency by the governor relating to
28 the protection of Arizona lives and property resulting from an increase in
29 unauthorized border crossings and the related increase in deaths, crime and
30 property damage.

31 B. Any federal monies provided to this state for national guard
32 deployment shall be used to offset the appropriation made in subsection A of
33 this section and the offset amount reverts to the state general fund.

34 C. The appropriation made in subsection A of this section is exempt
35 from the provisions of section 35-190, Arizona Revised Statutes, relating to
36 lapsing of appropriations.

37 D. Any federal monies provided to this state for national guard
38 mobilization shall be used to offset the appropriation made in subsection A
39 of this section and the offset amount reverts to the state general fund.

40 Sec. 40. Appropriation; border environmental study; report;
41 exemption; reimbursement

42 A. The sum of \$200,000 is appropriated from the state general fund in
43 fiscal year 2006-2007 to the state land department to enter into a contract
44 with a private contractor for an environmental impact study of the effects of
45 illegal immigration on state lands in the southern Arizona border counties.

1 B. The request for proposals shall be developed by the state land
2 department in consultation with the department of environmental quality and
3 the Arizona game and fish department.

4 C. The study shall include the vehicular and foot traffic effects of
5 illegal immigration on habitat, animal and plant life and any other adverse
6 environmental effects.

7 D. A report of the findings of the study shall be submitted by the
8 state land department to the speaker of the house of representatives and the
9 president of the senate by December 1, 2007.

10 E. The appropriation made in subsection A of this section is exempt
11 from the provisions of section 35-190, Arizona Revised Statutes, relating to
12 lapsing of appropriations.

13 F. Any federal monies provided to this state for a border
14 environmental study shall be used to offset the appropriation made in
15 subsection A of this section and the offset amount reverts to the state
16 general fund.

17 Sec. 41. Appropriation; auditor general; federal audits;
18 exemption; reimbursement

19 A. The sum of \$150,000 is appropriated from the state general fund in
20 fiscal year 2006-2007 to the auditor general for the purpose of contracting
21 with a third party to conduct any fiscal audits that are federally required.

22 B. The appropriation made in subsection A of this section is exempt
23 from the provisions of section 35-190, Arizona Revised Statutes, relating to
24 lapsing of appropriations.

25 C. Any federal monies provided to this state for the auditor general
26 to conduct audits shall be used to offset the appropriation made in
27 subsection A of this section and the offset amount reverts to the state
28 general fund.

29 Sec. 42. Funding for peace officer training; investigating
30 violations of federal immigration laws

31 Programs to train peace officers to investigate violations of federal
32 immigration laws by the department of public safety, county sheriffs and
33 police departments of cities and towns pursuant to section 11-1051,
34 subsection D, Arizona Revised Statutes, as added by this act, shall be funded
35 by federal funds that are received by this state.

36 Sec. 43. Severability; construction

37 A. If any provision of this act or its application to any person or
38 circumstance is held invalid, the invalidity does not affect other provisions
39 or applications of this act that can be given effect without the invalid
40 provision or application, and to this end the provisions of this act are
41 severable.

42 B. All provisions in this act that are relevant to immigration or the
43 classification of aliens shall be construed to be in conformity with federal
44 immigration law.

1 Sec. 44. Delayed repeal

2 Section 41-1292.01, Arizona Revised Statutes, as added by this act, is
3 repealed from and after December 31, 2009.

4 Sec. 45. Legislative intent

5 It is the intent of the legislature that law enforcement agencies and
6 personnel fully comply with sections 11-1051 and 41-1702, Arizona Revised
7 Statutes, as added by this act, to accomplish the goal of supplementing the
8 efforts of federal law enforcement agencies to stop human smuggling and
9 trespassing by illegal aliens and by transferring illegal aliens to such
10 agencies, notwithstanding any local law enforcement policies that would
11 otherwise inhibit such compliance.



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

June 6, 2006

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Re: House Bill 2577: immigration law; employment; enforcement

Dear Speaker Weiers:

Today I vetoed House Bill 2577, a weak and ineffective illegal immigration bill that offers complete amnesty to employers, violates the constitution, and is overwhelmingly opposed by law enforcement and top border elected officials in the state.

Recently, we have made a number of positive first strides in combating illegal immigration. These include finally prevailing upon the Bush Administration to send thousands of federally-funded National Guard members to the border; enacting tough new human smuggling legislation; prosecuting the money launderers who fund illegal crossings; and the recent and on-going arrests by my fraudulent ID task force, including the arrests of over 100 persons suspected of large-scale immigration document forgery. But House Bill 2577 is a step backwards. It offers no constructive new ideas and instead is filled with unworkable or unconstitutional provisions that I have previously objected to or vetoed. Indeed, your failure to work with me to develop a more comprehensive bill, coupled with your unilateral decision to stock this bill full of provisions you know are opposed by our border communities, law enforcement agencies, and me, confirms that you view this bill more as a political game than as a serious effort to protect the border.

Nowhere is this more evident than in the so-called employer "sanction" provisions of this bill. Despite my repeated calls for meaningful employer sanctions, House Bill 2577 offers full amnesty to any employer who hires an illegal immigrant and gets caught. All the employer must do to claim this amnesty is fire the illegal worker within 10 days of receiving a cease and desist order from the Attorney General. Under this bill, an employer that simply complies with the order upon receipt pays no fine, risks no jail time, and can continue with normal business operations as if nothing has happened. Moreover, it is unlikely that an employer will even receive a cease and desist order because the bill fails to appropriate anything close to the estimated \$11 million the Attorney General needs to audit annually five percent of all employers in the state, as the bill purports to require.

To make matters worse, this bill *indemnifies* any employer against lawsuits brought by employees they fire after a cease and desist order is issued. These remarkable and unprecedented

The Honorable Jim Weiers

June 6, 2006

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provisions would force the *taxpayer* to pay not only any damages that are awarded against the employer, but also the employer's attorneys' fees incurred defending the action. Moreover, the taxpayer would have to pay these fees *even if the employee who sues was in fact here illegally*. The costs of these overbroad provisions are uncapped and could easily end up exceeding ten million dollars. If anything, these provisions encourage, rather than deter, illegal hiring in Arizona.

Real sanctions are supposed to mean the lawbreaker *pays* a penalty, not that he *gets paid* by taxpayers. Arizona should never be in the business of defending one lawbreaker (the employer) against a lawsuit brought by another (the illegal immigrant). To do otherwise would be to send a clarion call to crossers and unscrupulous employers alike: "Come to Arizona, where our legislature fosters an illegal underground labor market by holding employers completely harmless for illegal hiring."

I have told you repeatedly that I am willing to work with you to develop comprehensive immigration reform that provides not only real sanctions against illegal hiring but also the resources our local law enforcement needs to play a meaningful role. My budget in particular calls for such funding, and I remain serious about providing it, so long as it is through an appropriate funding vehicle, such as the Department of Emergency and Military Affairs or the Arizona Criminal Justice Commission. In the meantime, I will continue to work with state and local law enforcement, elected officials, the National Guard, and the federal Department of Homeland Security to secure Arizona's southern border.

Without a strong employer sanctions provision, your bill hinders rather than helps these efforts. For these and other reasons, including those set forth in my April 25, 2006 veto message regarding Senate Bill 1157, I have vetoed House Bill 2577.

Yours very truly,


Janet Napolitano
Governor

JN:TAN/jm

cc: Hon. Ken Bennett
Hon. Russell Pearce

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2779

AN ACT

AMENDING SECTION 13-2009, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; MAKING APPROPRIATIONS; RELATING TO EMPLOYMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-2009, Arizona Revised Statutes, is amended to
3 read:

4 13-2009. Aggravated taking identity of another person or
5 entity; classification

6 A. A person commits aggravated taking the identity of another person
7 or entity if the person knowingly takes, purchases, manufactures, records,
8 possesses or uses any personal identifying information or entity identifying
9 information of either:

10 1. ~~Five~~ THREE or more other persons or entities, including real or
11 fictitious persons or entities, without the consent of the other persons or
12 entities, with the intent to obtain or use the other persons' or entities'
13 identities for any unlawful purpose or to cause loss to the persons or
14 entities whether or not the persons or entities actually suffer any economic
15 loss.

16 2. Another person or entity, including a real or fictitious person or
17 entity, without the consent of that other person or entity, with the intent
18 to obtain or use the other person's or entity's identity for any unlawful
19 purpose and causes another person or entity to suffer an economic loss of
20 three thousand dollars or more.

21 3. ANOTHER PERSON, INCLUDING A REAL OR FICTITIOUS PERSON, WITH THE
22 INTENT TO OBTAIN EMPLOYMENT.

23 B. In an action for aggravated taking the identity of another person
24 or entity under subsection A, paragraph 1 of this section, proof of
25 possession out of the regular course of business of the personal identifying
26 information or entity identifying information of ~~five~~ THREE or more other
27 persons or entities may give rise to an inference that the personal
28 identifying information or entity identifying information of the ~~five~~ THREE
29 or more other persons or entities was possessed for an unlawful purpose.

30 C. This section does not apply to a violation of section 4-241 by a
31 person who is under twenty-one years of age.

32 D. Aggravated taking the identity of another person or entity is a
33 class 3 felony.

34 Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is amended by
35 adding article 2, to read:

36 ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS

37 23-211. Definitions

38 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

39 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
40 STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR PURPOSES OF
41 OPERATING A BUSINESS IN THIS STATE.

42 2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT
43 PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND
44 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

1 3. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS EMPLOYMENT SERVICES FOR AN
2 EMPLOYER PURSUANT TO AN EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEE AND
3 EMPLOYER.

4 4. "EMPLOYER" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT
5 TRANSACTS BUSINESS IN THIS STATE, THAT HAS A LICENSE ISSUED BY AN AGENCY IN
6 THIS STATE AND THAT EMPLOYS ONE OR MORE INDIVIDUALS WHO PERFORM EMPLOYMENT
7 SERVICES IN THIS STATE. EMPLOYER INCLUDES THIS STATE, ANY POLITICAL
8 SUBDIVISION OF THIS STATE AND SELF-EMPLOYED PERSONS.

9 5. "INTENTIONALLY" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-105.

10 6. "KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN" MEANS THE ACTIONS
11 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324A. THIS TERM SHALL BE
12 INTERPRETED CONSISTENTLY WITH 8 UNITED STATES CODE SECTION 1324A AND ANY
13 APPLICABLE FEDERAL RULES AND REGULATIONS.

14 7. "LICENSE":

15 (a) MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL, REGISTRATION,
16 CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY LAW AND THAT IS
17 ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

18 (b) INCLUDES:

19 (i) ARTICLES OF INCORPORATION UNDER TITLE 10.

20 (ii) A CERTIFICATE OF PARTNERSHIP, A PARTNERSHIP REGISTRATION OR
21 ARTICLES OF ORGANIZATION UNDER TITLE 29.

22 (iii) A GRANT OF AUTHORITY ISSUED UNDER TITLE 10, CHAPTER 15.

23 (iv) ANY TRANSACTION PRIVILEGE TAX LICENSE.

24 (c) DOES NOT INCLUDE:

25 (i) ANY LICENSE ISSUED PURSUANT TO TITLE 45 OR 49 OR RULES ADOPTED
26 PURSUANT TO THOSE TITLES.

27 (ii) ANY PROFESSIONAL LICENSE.

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

31 23-212. Employment of unauthorized aliens; prohibition; false
32 and frivolous complaints; violation; classification;
33 license suspension and revocation

34 A. AN EMPLOYER SHALL NOT INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN OR
35 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

36 B. ON RECEIPT OF A COMPLAINT THAT AN EMPLOYER ALLEGEDLY INTENTIONALLY
37 EMPLOYS AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN, THE
38 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL INVESTIGATE WHETHER THE EMPLOYER
39 HAS VIOLATED SUBSECTION A. WHEN INVESTIGATING A COMPLAINT, THE ATTORNEY
40 GENERAL OR COUNTY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF THE ALLEGED
41 UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES
42 CODE SECTION 1373(c). A STATE, COUNTY OR LOCAL OFFICIAL SHALL NOT ATTEMPT TO
43 INDEPENDENTLY MAKE A FINAL DETERMINATION ON WHETHER AN ALIEN IS AUTHORIZED TO
44 WORK IN THE UNITED STATES. AN ALIEN'S IMMIGRATION STATUS OR WORK

1 AUTHORIZATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT
2 TO 8 UNITED STATES CODE SECTION 1373(c). A PERSON WHO KNOWINGLY FILES A
3 FALSE AND FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION IS GUILTY OF A CLASS 3
4 MISDEMEANOR.

5 C. IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY
6 DETERMINES THAT THE COMPLAINT IS NOT FRIVOLOUS:

7 1. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE UNITED
8 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE UNAUTHORIZED ALIEN.

9 2. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE LOCAL LAW
10 ENFORCEMENT AGENCY OF THE UNAUTHORIZED ALIEN.

11 3. THE ATTORNEY GENERAL SHALL NOTIFY THE APPROPRIATE COUNTY ATTORNEY
12 TO BRING AN ACTION PURSUANT TO SUBSECTION D IF THE COMPLAINT WAS ORIGINALLY
13 FILED WITH THE ATTORNEY GENERAL.

14 D. AN ACTION FOR A VIOLATION OF SUBSECTION A SHALL BE BROUGHT AGAINST
15 THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE UNAUTHORIZED
16 ALIEN EMPLOYEE IS EMPLOYED. THE COUNTY ATTORNEY SHALL NOT BRING AN ACTION
17 AGAINST ANY EMPLOYER FOR ANY VIOLATION OF SUBSECTION A THAT OCCURS BEFORE
18 JANUARY 1, 2008. A SECOND VIOLATION OF THIS SECTION SHALL BE BASED ONLY ON
19 AN UNAUTHORIZED ALIEN WHO IS EMPLOYED BY THE EMPLOYER AFTER AN ACTION HAS
20 BEEN BROUGHT FOR A VIOLATION OF SUBSECTION A.

21 E. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE COURT
22 SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING AT THE EARLIEST
23 PRACTICABLE DATE.

24 F. ON A FINDING OF A VIOLATION OF SUBSECTION A:

25 1. FOR A FIRST VIOLATION DURING A THREE YEAR PERIOD THAT IS A KNOWING
26 VIOLATION OF SUBSECTION A, THE COURT:

27 (a) SHALL ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL
28 UNAUTHORIZED ALIENS.

29 (b) SHALL ORDER THE EMPLOYER TO BE SUBJECT TO A THREE YEAR
30 PROBATIONARY PERIOD. DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE
31 QUARTERLY REPORTS WITH THE COUNTY ATTORNEY OF EACH NEW EMPLOYEE WHO IS HIRED
32 BY THE EMPLOYER AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN
33 PERFORMED WORK.

34 (c) SHALL ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE
35 COUNTY ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. THE
36 AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED THE EMPLOYMENT OF ALL
37 UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT INTENTIONALLY OR KNOWINGLY
38 EMPLOY AN UNAUTHORIZED ALIEN. THE COURT SHALL ORDER THE APPROPRIATE AGENCIES
39 TO SUSPEND ALL LICENSES SUBJECT TO THIS SUBDIVISION THAT ARE HELD BY THE
40 EMPLOYER IF THE EMPLOYER FAILS TO FILE A SIGNED SWORN AFFIDAVIT WITH THE
41 COUNTY ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. ALL
42 LICENSES THAT ARE SUSPENDED UNDER THIS SUBDIVISION SHALL REMAIN SUSPENDED
43 UNTIL THE EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY.
44 NOTWITHSTANDING ANY OTHER LAW, ON FILING OF THE AFFIDAVIT THE SUSPENDED

1 LICENSES SHALL BE REINSTATED IMMEDIATELY BY THE APPROPRIATE AGENCIES FOR THE
2 PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT ARE SUBJECT TO SUSPENSION
3 UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND
4 THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S
5 BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE
6 IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION
7 WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO
8 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE SUBJECT TO
9 SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE
10 EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE
11 COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES
12 SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S ORDER. THE COURT SHALL
13 SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY GENERAL AND THE ATTORNEY
14 GENERAL SHALL MAINTAIN THE COPY PURSUANT TO SUBSECTION G.

15 (d) MAY ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES
16 DESCRIBED IN SUBDIVISION (c) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER
17 FOR NOT TO EXCEED TEN BUSINESS DAYS. THE COURT SHALL BASE ITS DECISION TO
18 SUSPEND UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO IT
19 DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER THE
20 FOLLOWING FACTORS, IF RELEVANT:

- 21 (i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.
- 22 (ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.
- 23 (iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.
- 24 (iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY
25 APPLICABLE REQUIREMENTS.
- 26 (v) THE DURATION OF THE VIOLATION.
- 27 (vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER
28 IN THE VIOLATION.
- 29 (vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

30 2. FOR A FIRST VIOLATION DURING A FIVE YEAR PERIOD THAT IS AN
31 INTENTIONAL VIOLATION OF SUBSECTION A, THE COURT SHALL:

32 (a) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED
33 ALIENS.

34 (b) ORDER THE EMPLOYER TO BE SUBJECT TO A FIVE YEAR PROBATIONARY
35 PERIOD. DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE QUARTERLY
36 REPORTS WITH THE COUNTY ATTORNEY OF EACH NEW EMPLOYEE WHO IS HIRED BY THE
37 EMPLOYER AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED
38 WORK.

39 (c) ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES, DESCRIBED
40 IN SUBDIVISION (d) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER FOR A
41 MINIMUM OF TEN DAYS. THE COURT SHALL BASE ITS DECISION ON THE LENGTH OF THE
42 SUSPENSION UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO
43 IT DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER
44 THE FOLLOWING FACTORS, IF RELEVANT:

- 1 (i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.
- 2 (ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.
- 3 (iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.
- 4 (iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY
- 5 APPLICABLE REQUIREMENTS.
- 6 (v) THE DURATION OF THE VIOLATION.
- 7 (vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER
- 8 IN THE VIOLATION.
- 9 (vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.
- 10 (d) ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE
- 11 COUNTY ATTORNEY. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED
- 12 THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT
- 13 INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN. ALL LICENSES THAT
- 14 ARE SUSPENDED UNDER THIS SUBDIVISION SHALL REMAIN SUSPENDED UNTIL THE
- 15 EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY. FOR THE
- 16 PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT ARE SUBJECT TO SUSPENSION
- 17 UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND
- 18 THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S
- 19 BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE
- 20 IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION
- 21 WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO
- 22 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE SUBJECT TO
- 23 SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE
- 24 EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE
- 25 COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES
- 26 SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S ORDER. THE COURT SHALL
- 27 SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY GENERAL AND THE ATTORNEY
- 28 GENERAL SHALL MAINTAIN THE COPY PURSUANT TO SUBSECTION G.
- 29 3. FOR A SECOND VIOLATION OF SUBSECTION A DURING THE PERIOD OF
- 30 PROBATION, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY
- 31 REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND THAT ARE NECESSARY TO
- 32 OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION WHERE THE
- 33 UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE IS NOT NECESSARY TO OPERATE
- 34 THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN
- 35 PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS
- 36 IN GENERAL, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY
- 37 REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY
- 38 PLACE OF BUSINESS. ON RECEIPT OF THE ORDER AND NOTWITHSTANDING ANY OTHER
- 39 LAW, THE APPROPRIATE AGENCIES SHALL IMMEDIATELY REVOKE THE LICENSES.
- 40 G. THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF COURT ORDERS THAT ARE
- 41 RECEIVED PURSUANT TO SUBSECTION F AND SHALL MAINTAIN A DATABASE OF THE
- 42 EMPLOYERS WHO HAVE A FIRST VIOLATION OF SUBSECTION A AND MAKE THE COURT
- 43 ORDERS AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE.

1 H. ON DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED ALIEN, THE
2 COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO
3 8 UNITED STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S DETERMINATION
4 CREATES A REBUTTABLE PRESUMPTION OF THE EMPLOYEE'S LAWFUL STATUS. THE COURT
5 MAY TAKE JUDICIAL NOTICE OF THE FEDERAL GOVERNMENT'S DETERMINATION AND MAY
6 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL
7 VERIFICATION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

8 I. FOR THE PURPOSES OF THIS SECTION, PROOF OF VERIFYING THE EMPLOYMENT
9 AUTHORIZATION OF AN EMPLOYEE THROUGH THE BASIC PILOT PROGRAM CREATES A
10 REBUTTABLE PRESUMPTION THAT AN EMPLOYER DID NOT INTENTIONALLY EMPLOY AN
11 UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

12 J. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYER WHO ESTABLISHES THAT
13 IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 UNITED STATES CODE
14 SECTION 1324b ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT
15 INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

16 23-213. Employer actions; federal or state law compliance

17 THIS ARTICLE SHALL NOT BE CONSTRUED TO REQUIRE AN EMPLOYER TO TAKE ANY
18 ACTION THAT THE EMPLOYER BELIEVES IN GOOD FAITH WOULD VIOLATE FEDERAL OR
19 STATE LAW.

20 23-214. Verification of employment eligibility; basic pilot
21 program

22 AFTER DECEMBER 31, 2007, EVERY EMPLOYER, AFTER HIRING AN EMPLOYEE,
23 SHALL VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE BASIC
24 PILOT PROGRAM.

25 Sec. 3. Employer notice

26 On or before October 1, 2007, the department of revenue shall provide a
27 notice to every employer that is required to withhold tax pursuant to title
28 43, chapter 4, Arizona Revised Statutes. The notice shall explain the
29 requirements of title 23, chapter 2, article 2, Arizona Revised Statutes, as
30 added by this act, including the following:

31 1. A new state law prohibits employers from intentionally employing an
32 unauthorized alien or knowingly employing an unauthorized alien.

33 2. For a first violation of this new state law during a three year
34 period that is a knowing violation, the court will order the appropriate
35 licensing agencies to suspend all licenses held by the employer unless the
36 employer files a signed sworn affidavit with the county attorney within three
37 business days. The filed affidavit must state that the employer has
38 terminated the employment of all unauthorized aliens and that the employer
39 will not intentionally or knowingly employ an unauthorized alien. A license
40 that is suspended will remain suspended until the employer files a signed
41 sworn affidavit with the county attorney. A copy of the court order will be
42 made available on the attorney general's website.

43 3. For a first violation of this new state law during a five year
44 period that is an intentional violation, the court will order the appropriate

1 licensing agencies to suspend all licenses held by the employer for a minimum
2 of ten days. The employer must file a signed sworn affidavit with the county
3 attorney. The filed affidavit must state that the employer has terminated
4 the employment of all unauthorized aliens and that the employer will not
5 intentionally or knowingly employ an unauthorized alien. A license that is
6 suspended will remain suspended until the employer files a signed sworn
7 affidavit with the county attorney. A copy of the court order will be made
8 available on the attorney general's website.

9 4. For a second violation of this new state law, the court will order
10 the appropriate licensing agencies to permanently revoke all licenses that
11 are held by the employer.

12 5. Proof of verifying the employment authorization of an employee
13 through the basic pilot program, as defined in section 23-211, Arizona
14 Revised Statutes, as added by this act, will create a rebuttable presumption
15 that an employer did not violate the new state law.

16 6. After December 31, 2007, every employer, after hiring an employee,
17 is required to verify the employment eligibility of the employee through the
18 basic pilot program, as defined in section 23-211, Arizona Revised Statutes,
19 as added by this act.

20 7. Instructions for the employer on how to enroll in the basic pilot
21 program, as defined in section 23-211, Arizona Revised Statutes, as added by
22 this act.

23 Sec. 4. Employer sanctions legislative study committee

24 A. The employer sanctions legislative study committee is established
25 consisting of the following members:

26 1. Three members of the senate who are appointed by the president of
27 the senate, not more than two of whom shall be members of the same political
28 party. The president of the senate shall designate one of these members to
29 co-chair the committee.

30 2. Three members of the house of representatives who are appointed by
31 the speaker of the house of representatives, not more than two of whom shall
32 be members of the same political party. The speaker of the house of
33 representatives shall designate one of these members to co-chair the
34 committee.

35 3. A citizen of Arizona appointed by the president of the senate who
36 owns a business in Arizona with no more than 30 employees.

37 4. A citizen of Arizona appointed by the speaker of the house of
38 representatives who owns a business in Arizona with more than 30 employees.

39 B. The Committee shall:

40 1. Examine the laws and regulations pertaining to employers sanctions
41 in Arizona.

42 2. Examine the effects of these laws and whether such laws are being
43 properly implemented.

1 3. Examine if these laws are being applied to all businesses in
2 Arizona in a fair manner.

3 4. Examine if the complaint process is being implemented in a fair and
4 just manner.

5 5. Submit a report of its findings and recommendations to the
6 governor, the president of the senate and speaker of the house of
7 representatives on or before December 31, 2008 and submit a copy of its
8 report to the secretary of state and the director of the Arizona state,
9 library archives and public records.

10 C. Committee members are not eligible to receive compensation or
11 reimbursement of expenses.

12 Sec. 5. Severability

13 If any provision of this act or its application to any person or
14 circumstance is held invalid, the invalidity does not affect other provisions
15 or applications of this act that can be given effect without the invalid
16 provision or application, and to this end the provisions of this act are
17 severable.

18 Sec. 6. Short title

19 This act shall be known as and may be cited as the "Legal Arizona
20 Workers Act."

21 Sec. 7. Appropriation; attorney general enforcement; exemption

22 A. The sum of \$100,000 is appropriated from the state general fund in
23 fiscal year 2007-2008 to the attorney general for the purpose of enforcing
24 any immigration related matters and section 23-212, Arizona Revised Statutes,
25 as added by this act.

26 B. The appropriation made in subsection A of this section is exempt
27 from the provisions of section 35-190, Arizona Revised Statutes, relating to
28 lapsing of appropriations.

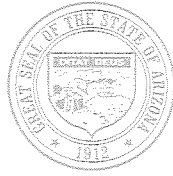
29 Sec. 8. Appropriation; county attorney enforcement; department
30 of revenue; employer notice; exemption

31 A. The sum of \$2,430,000 is appropriated from the state general fund
32 in fiscal year 2007-2008 to the department of administration to be
33 distributed to the county attorneys in this state for the purpose of
34 enforcing any immigration related matters and section 23-212, Arizona Revised
35 Statutes, as added by this act. The department of administration shall
36 distribute these monies to each county attorney as follows:

37 1. \$1,430,000 to each county attorney of a county in this state having
38 a population of one million five hundred thousand or more persons.

39 2. \$500,000 to each county attorney of a county in this state having a
40 population of eight hundred thousand or more persons but less than one
41 million five hundred thousand persons.

1 3. The remainder of monies to be distributed as equally as possible to
2 each county attorney of counties in this state having a population of less
3 than five hundred thousand persons.
4 B. The sum of \$70,000 is appropriated from the state general fund in
5 fiscal year 2007-2008 to the department of revenue for the purposes
6 prescribed in section 3 of this act.
7 C. The appropriation made in subsection A of this section is exempt
8 from the provisions of section 35-190, Arizona Revised Statutes, relating to
9 lapsing of appropriations.
10 Sec. 9. Delayed repeal
11 Section 4 as added by this act is repealed from and after January 1,
12 2009.



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

July 2, 2007

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Re: House Bill 2779: fair and legal employment

Dear Speaker Weiers:

Today I signed House Bill 2779, the Legal Arizona Workers Act.

With my signature on this bill, Arizona has taken the most aggressive action in the country against employers who knowingly or intentionally hire undocumented workers. Unlike House Bill 2577 from last session, which I vetoed because it offered employer amnesty and indemnification, this bill imposes tough consequences on those who knowingly employ undocumented workers.

Immigration is a federal responsibility, but I signed House Bill 2779 because it is now abundantly clear that Congress finds itself incapable of coping with the comprehensive immigration reforms our country needs. I signed it, too, out of the realization that the flow of illegal immigration into our state is due to the constant demand of some employers for cheap, undocumented labor.

In our desire to stop illegal immigration, however, we must not overlook some drafting problems and omissions in House Bill 2779. We must not harm legitimate Arizona employers and employees as we seek to curb illegal employment practices. The problems in House Bill 2779 include the following:

- The bill lacks an antidiscrimination clause to ensure that it is enforced in a fair and non-discriminatory manner. Federal and state law preclude employment discrimination against Arizonans on the basis of race or national origin and this bill can and must be enforced in a way to ensure that no lawful worker faces discrimination on these bases. Indeed, even in the absence of a legislative fix on this issue, I will call upon my Office of Equal Employment Opportunity and the Attorney General's Civil Rights Division to actively promote efforts to educate

employers on how to implement this bill fairly and to aggressively prosecute cases of discrimination that may arise.

- Unlike earlier draft amendments, the final version of House Bill 2779 omits the license revocation exception for businesses servicing critical infrastructure. Despite our compelling interest in ensuring fair and legal employment, it is not in the state's best interest to close hospitals, power plants and other similarly critical businesses because of wrongful employment decisions. Other sanctions should be explored.
- The bill's license revocation provisions are also overly broad to the extent that they are susceptible to an interpretation requiring the closure of multiple locations or franchises of a business based solely on the wrongful hiring practices of one location. The legislature should preclude such a result.
- This bill provides woefully inadequate funding for the law enforcement agencies charged with enforcing it. The Attorney General's Office in particular is underfunded by the bill. The \$100,000 appropriated to that office will be inadequate for it to meet its obligations of both developing the extensive database required and investigating complaints. More funding is needed for those purposes as well as to ensure that the Civil Rights Division has sufficient resources to guarantee that the law is enforced in a non-discriminatory manner. The \$70,000 appropriated for employer notification is also inadequate.
- Finally, I note that House Bill 2779 contains an important typographical error that must be corrected. On page 6, line 14, the bill cites 8 U.S.C. § 1324b for the purposes of establishing a rebuttable presumption for employers who comply with federal employment verification procedures. The correct cite should be to 8 U.S.C. § 1324a (b).

Because of these infirmities, and because many employers have told me either that they did not have sufficient time to let the legislature know of their concerns with the *final* version of House Bill 2779 or that their concerns were not given thorough consideration, I am willing to call the legislature into special session this fall to enable it to fix this bill before its January 1, 2008 effective date. As Representative Pearce and Senator Burns acknowledged in a June 28, 2007 letter to me "Notwithstanding all our efforts, we understand that no bill is perfect and changes may be needed as the bill is implemented. For that reason, we believe that dealing with this issue through the legislative process is preferable to the initiative process." I agree, but I believe some changes to this bill are needed even before it becomes effective. The date of the special session will be determined after I have had the opportunity to consult legislative leadership. The special session will be aimed at clarifications, omissions, and corrections, *not* at undercutting the underlying strength of House Bill 2779.

The Honorable Jim Weiers

July 2, 2007

Page 3

Because of Congress' failure to act, states like Arizona have no choice but to take strong action to discourage the further flow of illegal immigration through our borders. I renew my call to Congress to enact comprehensive immigration reform legislation. Now that Arizona has acted, other states are likely to follow. For our country to have a uniform and uniformly enforced immigration law, the United States Congress must act swiftly and definitively to solve this problem at the national level.

Yours very truly,



Janet Napolitano

Governor

JN:TAN/jm

cc: The Honorable Timothy Bee
The Honorable Russell K. Pearce

Instructions

Please read all instructions carefully before completing this form.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination.

What Is the Purpose of This Form?

The purpose of this form is to document that each new employee (both citizen and non-citizen) hired after November 6, 1986 is authorized to work in the United States.

When Should the Form I-9 Be Used?

All employees, citizens and noncitizens, hired after November 6, 1986 and working in the United States must complete a Form I-9.

Filling Out the Form I-9

Section 1, Employee: This part of the form must be completed at the time of hire, which is the actual beginning of employment. Providing the Social Security number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

Preparer/Translator Certification. The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his/her own. However, the employee must still sign **Section 1** personally.

Section 2, Employer: For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete **Section 2** by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required

document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, **Section 2** must be completed at the time employment begins. **Employers must record:**

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the Form I-9. **However, employers are still responsible for completing and retaining the Form I-9.**

Section 3, Updating and Reverification: Employers must complete **Section 3** when updating and/or reverifying the Form I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in **Section 1**. Employers **CANNOT** specify which document(s) they will accept from an employee.

- A. If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B. If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C. If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B and:

1. Examine any document that reflects that the employee is authorized to work in the U.S. (see List A **or** C);
2. Record the document title, document number and expiration date (if any) in Block C, and
3. Complete the signature block.

What Is the Filing Fee?

There is no associated filing fee for completing the Form I-9. This form is not filed with USCIS or any government agency. The Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

USCIS Forms and Information

To order USCIS forms, call our toll-free number at **1-800-870-3676**. Individuals can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis.gov**.

Photocopying and Retaining the Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Forms I-9 for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

The Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR § 274a.2.

Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of U.S. Immigration and Customs Enforcement, Department of Labor and Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Paperwork Reduction Act

We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: **1)** learning about this form, and completing the form, 9 minutes; **2)** assembling and filing (recordkeeping) the form, 3 minutes, for an average of 12 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0047.

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen or national of the United States
- A lawful permanent resident (Alien #) A _____
- An alien authorized to work until _____
(Alien # or Admission #) _____

Employee's Signature	Date (month/day/year)
----------------------	-----------------------

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.		
Document Title: _____	Document #: _____	Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
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LISTS OF ACCEPTABLE DOCUMENTS

LIST A Documents that Establish Both Identity and Employment Eligibility	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)		1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		1. U.S. Social Security card issued by the Social Security Administration <i>(other than a card stating it is not valid for employment)</i>
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		2. Certification of Birth Abroad issued by the Department of State <i>(Form FS-545 or Form DS-1350)</i>
3. An unexpired foreign passport with a temporary I-551 stamp		3. School ID card with a photograph		3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)		4. Voter's registration card		4. Native American tribal document
		5. U.S. Military card or draft record		5. U.S. Citizen ID Card <i>(Form I-197)</i>
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer		6. Military dependent's ID card		6. ID Card for use of Resident Citizen in the United States <i>(Form I-179)</i>
		7. U.S. Coast Guard Merchant Mariner Card		
		8. Native American tribal document		7. Unexpired employment authorization document issued by DHS <i>(other than those listed under List A)</i>
	9. Driver's license issued by a Canadian government authority			
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor or hospital record		
		12. Day-care or nursery school record		

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

ARIZONA HOUSE OF REPRESENTATIVES

SPECIAL INTERIM MEETING NOTICE OPEN TO THE PUBLIC

AD HOC COMMITTEE ON BUSINESS OWNERS AND WORK SITE ENFORCEMENT

Date: Wednesday, October 10, 2007

Time: 1:00 P.M.

Place: HHR 4

AGENDA

1. Call to Order
2. Opening Remarks of the Chair - Purpose, Scope and Goals of the Committee
3. Introduction of Members and Staff
4. Staff overview of the provisions of HB 2779 (Laws 2007, Chapter 279)
5. Discussion of specific provisions:
 - Application to out-of-state employees
 - Reference to federal laws
 - Effect of license suspension/revocation on non-offending locations
6. House Rules Attorney: Employment Anti-Discrimination Laws
7. Discussion of agenda items for next meeting
8. Public Testimony

Members:

Representative Jim Weiers, Chair
Richard Bark
Richard Bibee
Jolynn Clarke
Ed Cook
Tim Dunn
Mitch Laird
Jason LeVecke

Randall Nye
Doug Quelland
Pat Quinn
Armando Rios
Ken Rosevear
Todd Sanders
Sarah Strunk

10/9/07
jmb

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

ARIZONA STATE LEGISLATURE
Forty-eighth Legislature – First Regular Session

**AD HOC COMMITTEE ON BUSINESS OWNERS
AND WORK SITE ENFORCEMENT**

Minutes of Special Meeting
Wednesday, October 10, 2007
HHR 4 -- 1:00 p.m.

Chairman Weiers called the meeting to order at 1:00 p.m. and attendance was noted by the secretary.

Members Present

Representative Jim Weiers, Chair	Doug Quelland
Richard Bark	Armando Rios
Richard Bibee	Ken Rosevear
Ed Cook	Todd Sanders
Tim Dunn	Sarah Strunk
Jason LeVecke	

Members Absent

Jolynn Clark	Randall Nye
Mitch Laird	Pat Quinn

Speakers Present

Rene Guillen, Majority Research Analyst
Jim Drake, House Rules Attorney

OPENING REMARKS:

Chairman Weiers stated that when he came to the Legislature in 1995, he brought with him his knowledge of the business community in an effort to protect business. Protecting business also protects the citizens of Arizona. He said he came to the Legislature to ensure that every business in the State has the tools and opportunities to prosper and grow. Along with education, business comprises one of the two most fundamental components in ensuring that Arizona will grow. He said the last thing he wants to see is legislation that has adverse impacts on honest businesses in the State. Last session, the Legislature passed H.B. 2779, fair and legal employment act, in an attempt to ensure honesty and fairness among businesses. He stated that the federal government has declared that it is illegal to knowingly employ an unauthorized alien. The State has the jurisdiction to enforce this law through revocation of State-issued licenses. He asked members to work with him to make this a better law for Arizona businesses and to move Arizona's future forward.

INTRODUCTION OF MEMBERS AND STAFF:

Chairman Weiers asked members and staff to introduce themselves.

Rene Guillen, Majority Research Analyst

Ken Rosevear, Executive Director, Yuma County Chamber of Commerce

Ed Cook, Executive Director, Arizona Prosecuting Attorneys Advisory Council
(APAAC)

Sarah Strunk, attorney practicing in the area of business and finance law

Richard Bibee, General Manager, Renaissance Scottsdale Resort and Chairman, Phoenix
Business Council

Todd Sanders, representing Greater Phoenix Chamber of Commerce

Richard Bark, attorney who worked on this legislation during the last legislative session

Jason LeVecke, business owner and CEO of Arizona Employers for Immigration Reform

Doug Quelland, small business owner

Armando Rios, consultant to many major employers in Tucson

Tim Dunn, owner of Tim Dunn Farms

STAFF OVERVIEW OF H.B. 2779:

Rene Guillen, Majority Research Analyst, summarized the provisions of H.B. 2779, fair and legal employment act, Chapter 279, Laws of 2007 (Attachment 1). The bill prohibits an employer from intentionally and knowingly employing an unauthorized alien and requires the Attorney General or county attorney, upon receipt of a complaint, to investigate the complaint. Additionally, the bill requires the Court to order the employer to terminate the employment of all unauthorized aliens and to suspend the appropriate licenses for ten business days. A second violation requires appropriate licenses to be permanently revoked. H.B. 2779 appropriates \$2.6 million from the General Fund to carry out the provisions of the bill.

Jim Drake, House Rules Attorney, made himself available for questions.

DISCUSSION OF SPECIFIC PROVISIONS:

- **Application to out-of-state employees:**

Mr. Sanders raised the issue of out-of-state employers and how this applies to companies that may have employees who work out of state. He wondered how they are subject to this legislation and whether they are subject to the verification process.

Chairman Weiers referred members to page 2, line 1.

Mr. Drake noted there is no definition for an out-of-state employee in the definition of "employee." He said the definition refers to an organization that transacts business in this State; therefore, it is clear there is a State tie.

Mr. LeVecke asked whether there would be an objection to making that explicit in the bill. Mr. Drake replied that he thinks it is already expressed in the bill. He thinks it would be redundant to add explicit language.

Mr. LeVecke expressed concern about the vagueness of the language. He feels it should be made explicit. Mr. Drake said he believes it is absolutely clear that this only applies to in-state employees.

Mr. Bark referred to page 3, lines 14-16, and said that language supports Mr. Drake's argument relating to the definition.

Mr. Quellend asked about the scope of this legislation and wondered whether it includes all businesses in the State, including schools, government, non-profit organizations, etc. Mr. Drake answered that the definition of employer answers that question. Every organization transacting business in Arizona and having a license issued by an agency of this State is included.

Mr. Sanders raised the issue of temporary workers. He asked whether liability would fall on the employer or the company who supplies the temporary workers. Mr. Drake referred back to the definition of "employee." He said the definition tries to capture a great many situations that may fall outside of the normal bounds because it specifies "an employment relationship" but does not mention the independent contractor situation. He said that term is not defined and would have to be interpreted.

- **Reference to federal laws:**

Chairman Weiers asked members to turn to page 6, line 12.

Mr. Bark explained this is the provision that establishes an affirmative defense that the employer has acted in good faith and complied with the requirements of U.S. Code Section 1324b. He pointed out that a technical error was made and the Section should be corrected to read 1324a(b).

Mr. Bark moved that the Committee make a recommendation to draft legislation to clarify that the references in H.B. 2779, known as Laws 2007, Chapter 279, apply to the proper federal laws. The motion carried.

Mr. Bark pointed out the offense for "knowingly" is already included in the definition on page 2, line 10.

Mr. Sanders said this could also include technical issues. He asked whether this reference will cause employers to be penalized for a technical problem. Mr. Bark replied this would conform it to federal law and would still allow the employer to get that defense. He said he does not believe it would include an innocent mistake.

- **Effect of license suspension/revocation on non-offending locations:**

Chairman Weiers referenced the following: page 4, line 2, starting with "The," page 5, line 16, starting with "the" and page 5, line 30, starting with "the."

Mr. Guillen read the provisions on license suspension on page 4, lines 2 through 10.

Mr. Sanders stated that one of the concerns of his members is the language that talks about the suspension of all licenses.

Mr. Bark said he believes the language on page 4, line 2, is all-inclusive. He referred to page 2, line 14, which defines "license" to mean any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State. He opined that the language on page 4, lines 2 through 5, would be specific to the one location where the violation occurred. If an employer had the type of business that did not have location-specific licenses, the general license would be affected and would affect all locations.

Ms. Strunk pointed out that many businesses have more than one license. She said this language is confusing as to what license gets revoked. She queried whether the license specific to that location would be revoked while the other licenses would remain in effect. She brought up the situation of a convenience market that has a liquor license that is site specific and asked whether a violation would result in the suspension of the liquor license for that particular convenience market. She expressed concern about a market with multiple sites and the shareholders of that corporation who may know nothing about the hiring practices who may lose their limited liability shield.

Chairman Weiers said his intent was that the suspension be site-specific. He believes that the intent needs to be clarified.

Mr. Bark maintained that the language on page 4, lines 2 through 5, is very specific. He believes the question to be raised is what type of businesses do not have location-specific licenses.

Ms. Strunk said there are many businesses that do not have location-specific licenses. As a business attorney, she is obliged to disclose to anyone investing in a corporation that they could lose their limited liability shield as a result of this legislation and that could potentially cause someone not to invest in an entity in Arizona.

Chairman Weiers raised the issue of a business with five locations operating under a single license and where only one location broke the law. He wondered how a license could be taken away from the one location when all five are under the single license.

Mr. Quelland said that raises the question of whether that specific location would be shut down or whether the other locations would also be shut down. Chairman Weiers replied that the business would not be shut down; the license would be revoked; however, he pointed out that revocation may result in the business being shut down. That is the issue and that is a huge concern.

Mr. Bark said the policy is clear in the first sentence on page 4 that the issue is location-specific. He believes the second sentence on page 4 is a legal question.

Mr. Dunn agreed that it gets complicated if the business is a limited liability corporation and has several different locations under separate management but under the same ownership.

Mr. LeVecke related that his business has 67 locations in the State, so that would be very problematic for him. He also noted that some cities require separate business licenses.

Mr. Rosevear brought up agricultural situations where workers work in different fields. He said that some labor contractors have as high as 8,000 employees under their control. Some days those workers work for a farm directly and other days may work for a labor contractor at different farms. In those circumstances, he thinks it is going to be very difficult to define who brings an action against whom in an agriculture situation.

Chairman Weiers said he assumes that the workers have documentation to show that they are legal workers. He stated that one of the issues to be discussed in future meetings is whether it is fair to put businesses in the position of policing what is legal and what is not.

Mr. Rosevear explained that buses pick up workers who have work visas at border towns and transport them over the border to work in the fields. Illegal aliens are not wanted on buses because the buses cross the border and if there is not proper documentation, the entire bus is detained at the border check station, causing the crew to lose a whole day of work. He said that between 20,000 to 22,000 workers come across the border daily. Most workers have been employed by farmers for years and some even have benefits.

Mr. Drake spoke about the workers compensation issue. He declared there is a need to find out who was employing the worker at the time of an injury, and this goes back to the definition. He thinks the definition is very broad and tries to capture as many people as possible under the term "employment relationship."

Mr. Bark noted that the key question is whether there is an employment relationship with the worker.

Mr. Sanders recommended the following language in terms of the shared licenses issue: page 4, line 3, strike "all" and on line 4, strike "necessary to operate" and insert "specific to the operation of."

Ms. Strunk also suggested striking "and" at the end of line 3.

Mr. Bark recommended amending the first sentence of page 4 on the shared-license issue to clarify that it is location-specific. In addition, the second sentence should be looked at because it is a legal question.

Mr. Cook said that rather than make these changes on a piecemeal basis, he would suggest that notations be made. He does not think changes should be made until the end of these meetings because of the potential impact on other sections.

Chairman Weiers related that this Committee does not have the ability to change the law. His intent is to get as much input as possible. He hopes this Committee will make recommendations that will improve the legislation and be adopted by the Legislature. He advised that Rene Guillen and Steve Moortel, House staffers, will be working on this issue and will be available to members for presentation of suggestions and recommendations.

Mr. Bark proposed that the Committee work on language to make this location-specific even when there is not a location-specific license.

Ms. Strunk noted there is no way to split up articles of incorporation at one site and not at another. She said it is either lost or not lost. From a business standpoint, that is one of her concerns and a concern that investors will have in potentially losing their limited liability shield.

Mr. Bark said he believes the law should be as location-specific as possible. He suggested that staff, Legislative Council and the Rules Attorney work on this issue.

Mr. Bark moved that the Committee direct staff to work with Legislative Council to explore the need for language that clarifies that the license suspension revocation as prescribed by Laws 2007, Chapter 279, apply solely to locations in violation of Laws 2007, Chapter 279.

EMPLOYMENT ANTI-DISCRIMINATION LAWS:

Jim Drake, House Rules Attorney, advised that the question has been posed whether this legislation in its current form would need a separate stand-alone anti-discrimination clause. He stated that the answer is no. In addition to the federal law on this subject, Arizona has its own Civil Rights Act that prevents discrimination, such as labor, public accommodation and voting. There are also other statutes such as Title 23 and 16 that relate to labor and voting, and Title 41 that protects all Arizonans.

Mr. Sanders stated that Chamber members have concerns about the complaint process concerning the hiring of illegal aliens. He queried whether the Attorney General and the county attorneys investigate every complaint based on the assertion that there is a certain race at a particular location.

Mr. Cook maintained the need to have integrity in the initial complaint process. He said that prosecutors have ethical obligations that they must follow. A complaint relating to illegal aliens involves a civil violation, not a criminal violation, and does not relieve them of their duties as a prosecutor; however, inappropriate complaints should not enter the process.

Chairman Weiers brought up the legitimacy of the process and who determines the process. Mr. Cook explained that the way this legislation is written, there is some belief that the Attorney General or the county attorneys would have to investigate all complaints. The complaint process needs to have some integrity built into it in order to prevent the investigation of inappropriate or malicious complaints. Complaints need to be evaluated to determine their validity; however, the

way the legislation is written may require a prosecutor to investigate a complaint even though it is not sufficiently founded.

Mr. Dunn said the problem with the way the legislation is written is the unfounded complaints. He does not think every complaint should be investigated.

Mr. Rios opined that it is going to be very difficult to set forth criteria about complaints. As a start, the Committee should look at the recommendation that the person making the complaint not remain anonymous. In addition, there should be strict penalties for making frivolous complaints. He thinks this would send a message to people that if they make an unfounded complaint, they will be penalized.

Chairman Weiers stated that he has a lot of concerns and questions about anonymous complaints. Mr. Drake advised that if a person knowingly files a false or frivolous complaint, the minimum is a Class 3 misdemeanor under the terms of the legislation. Mr. Cook noted that a Class 3 misdemeanor is the lowest class in a civil offense; minimum sentence is a suspended sentence while a maximum carries a sentence of 30 days in jail, a \$500 fine and a year's probation.

Based on comments made, Mr. Bark said he believes the complaint process should be a major topic for this Committee to discuss at the next meeting with prosecutors and business owners. He does not think a complaint should be filed based solely on a person's nationality or that he speaks Spanish or flies the Mexican flag, and it should be made clear that is not acceptable. He wondered whether prosecutors have decided what they will do. Mr. Cook related that he is not familiar with what the Maricopa County prosecutor's office is doing; however the 14 other counties have looked at creating integrity in the complaint process to ensure that complaints are legitimate and founded.

Mr. Sanders suggested that the solution may be that complaints may not be based on race.

Mr. Rios submitted that anonymous calls should not be pursued.

Chairman Weiers contended that complaints should have some validity and the process should contain safeguards to ensure validity.

Mr. LeVecke noted that on the subject of discrimination, he understands that many of the laws referred to by Mr. Drake apply only to employers of certain sizes. Mr. Drake said that in addition to the statutes that he referenced, federal law also protects individuals. He called members' attention to H.B. 2779, page 6, lines 16 through 19.

AGENDA ITEMS FOR NEXT MEETING:

- Employer's liability on subcontractors.
- Complaint process.

Mr. LeVecke said he would also like the "knowledge" issue addressed. He said some issues to be discussed are: who possesses that knowledge, whether employers will be liable for that

knowledge, and at what levels within the company or what employer in the State will be liable for knowledge within the company, even though ownership may not have any knowledge.

Without objection, the meeting adjourned at 2:30 p.m.

Joanne Bell, Committee Secretary
January 22, 2008

(Original minutes, attachments and audio on file in the Chief Clerk's Office)

ARIZONA HOUSE OF REPRESENTATIVES

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

AD HOC COMMITTEE ON BUSINESS OWNERS AND WORK SITE ENFORCEMENT

Date: Wednesday, October 24, 2007

Time: 3:00 P.M.

Place: HHR 4

AGENDA

1. Call to Order
2. Presentation about the E-Verify System
3. Discussion of the handling of complaints as described by HB2779 (Laws 2007, Chapter 279)
4. Impact of HB2779 (Laws 2007, Chapter 279) on Contractors and Subcontractors
5. Discussion of the definition of "knowingly" as used in HB2779 (Laws 2007, Chapter 279)
6. Discussion of agenda items for next meeting
7. Public Testimony

Members:

Representative Jim Weiers, Chair
Richard Bark
Richard Bibee
Jolynn Clarke
Ed Cook
Tim Dunn
Mitch Laird
Jason LeVecke

Randall Nye
Doug Quelland
Pat Quinn
Armando Rios
Ken Rosevear
Todd Sanders
Sarah Strunk

10/19/07
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ARIZONA STATE LEGISLATURE
Forty-eighth Legislature – First Regular Session

**AD HOC COMMITTEE ON BUSINESS OWNERS
AND WORK SITE ENFORCEMENT**

Minutes of Special Meeting
Wednesday, October 24, 2007
House Hearing Room 4 -- 3:00 p.m.

Chairman Weiers called the meeting to order at 3:03 p.m. and attendance was noted by the secretary.

Members Present

Representative Jim Weiers, Chair	Randall Nye
Richard Bark	Doug Quelland
Richard Bibee	Pat Quinn
Jolynn Clark	Armando Rios
Ed Cook	Todd Sanders
Mitch Laird	Sarah Strunk

Members Absent

Tim Dunn	Ken Rosevear
Jason LeVecke	

Speakers Present

Steve Moortel, Majority Research Analyst

OPENING STATEMENT

Chairman Weiers stated that this is the second meeting of this ad hoc committee assembled to provide input to the worksite encroachment law passed several months ago; he reiterated his belief that this is a law that is constitutional and can work. He stated that he welcomes suggestions to make a good law better and thanked the committee members for their time and involvement.

PRESENTATION ABOUT THE E-VERIFY SYSTEM

Ms. Clarke described Salt River Project's (SRP) experience with the E-Verify system: SRP opted to begin the program when it was still voluntary in May of 2006, found the training to be easy and has had very few problems with it. She stated that SRP has now processed 800-900 people and that anticipated problems with technical and accuracy issues did not occur; she added that there has been little downtime with the E-Verify system.

Mr. Sanders informed the committee that the Greater Phoenix Chamber of Commerce has signed up for E-Verify and is generally happy with the results. He stated his concern that, if an illegal individual steals a citizen's ID, the system will indicate that the illegal is then eligible to work. Ms. Clarke replied that a picture ID would be used as well, which would reveal the discrepancy. Discussion ensued that acknowledged the stolen ID problem.

Mr. Rios related a personal situation when he was approached by someone who wished to purchase his young son's social security number; he wondered if age was also checked.

Chairman Weiers stated that Arizona is first in the nation in identity theft and described examples of plans that are used.

Mr. Bark stated his belief that E-Verify would reveal the age discrepancy if a youth's social security number was stolen and used by an adult.

Chairman Weiers stated that Department of Administration has been using E-Verify and that he would obtain more information on their experiences.

Chairman Weiers recessed the committee at 3:15 p.m. so that technical difficulties with the sound system could be fixed; he reconvened the committee at 3:22 p.m.

Mr. Nye stated that he is with Sun Construction, which has used E-Verify and had no difficulty with it.

**DISCUSSION OF THE HANDLING OF COMPLAINTS AS DESCRIBED BY HB2779
(Laws 2007, Chapter 279)**

Mr. Cook explained that the Arizona Prosecuting Attorneys Advisory Council (APAAC) membership is set by statute, that the group works together to achieve consensus, and that it has been reviewing Chapter 279, the worksite law. He stated that the goal was to look at potential issues with the law and to identify any changes or adjustments to make the law work, and to assure implementation of the legislative intent. He commented that the Maricopa County Attorney's office opted to pursue its own policies and process, so APAAC represents the consensus of the fourteen other county attorney offices.

Mr. Cook handed out an example of the initial complaint form (Attachment 1). Chairman Weiers asked how someone would know all of the information requested, and how a complaint could be investigated if there is very little information filled out; Mr. Cook replied that this is to begin a process and that the individual making the complaint must make a best effort to provide information. Discussion ensued about the notary requirement, which would remove anonymity from the complainant.

Mr. Rios asked if an unsigned complaint would be investigated; Mr. Cook replied that the fourteen counties outside Maricopa would not allow an anonymous complaint. Mr. Rios stated his belief that business owners would be in agreement with that.

Mr. Bark asked about the Pima County requirement of a meeting with a detective; Mr. Cook replied that this is specific to the county.

Mr. Bark asked if anyone other than Maricopa County is looking at an IGA (intergovernmental agreement) with the sheriff; Mr. Cook replied that there is an MOU (memorandum of understanding) in Maricopa County, and that there is a question if a county attorney can delegate such a responsibility. He went on to discuss that this is for civil not criminal enforcement.

Mr. Laird stated that Mr. Cook's suggestions and safeguards should be incorporated into statute.

Mr. Sanders stated that he concurs, and also suggested that race-based complaints be investigated. He asked about due process and how it will work with employees who are incorrectly deemed illegal and not authorized to work (a false negative result), are fired, and are then discovered to be legal. Mr. Cook replied that the protocol for that is not yet complete, but that the county attorney's office (the enforcing agency) still has to prove that the hiring was either knowing or intentional. He stated that if the individual has completed an I-9 form (Employment Eligibility Verification form for the Department of Homeland Security), then the business does have that proof.

Chairman Weiers asked if Mr. Sanders was asking from a business or from an employee perspective; Mr. Sanders replied that he was asking from a business perspective. Mr. Bark clarified that the task is to define the process if a legitimate citizen is denied work; Mr. Sanders replied that the process is to investigate.

Mr. Cook stated that the issue is how to prove a knowing violation by an employer; Mr. Laird reiterated the importance of incorporating that safeguard in the statute. Mr. Bark stated that he would like to hear from Maricopa County first; Mr. Cook concurred that it is important to hear their rationale. Chairman Weiers stated that the County had not been included in these early meetings, but that he will get those answers soon.

Mr. Rios asked about the appropriateness of changing the penalty for making frivolous complaints from Class III misdemeanor to Class I misdemeanor.

Mr. Cook explained that:

- Class III misdemeanor punishment can range from a suspended sentence to a \$500 fine, one year probation, and 30 days in jail, and
- Class I misdemeanor punishment can range from a suspended sentence to a \$2,500 fine, three years probation, and 180 days in jail.

Chairman Weiers stated that the initiative may be amended to make the submission of frivolous complaints a felony; Mr. Rios stated that he and the business owners he represents would have no problem with it being a felony.

Mr. Quelland asked about item 4 in Attachment 1, the complaint form; he asked if an individual's rights may be violated by the requirement to obtain specific and detailed information. Mr. Cook stated that he could not imagine that context because, if a crime has been committed, any information gained is subject to prosecution. He further stated that if a crime is

committed to obtain the information, then that too is subject to prosecution. Discussion ensued regarding the complaint form and how much information is required and how far it will be investigated.

Mr. Rios opined that stricter penalties would deter the occurrence of frivolous or false complaints.

Mr. Bark quoted from the guidelines of Pima County whereby a valid complaint form must include:

1. complainant's name, address, social security number, date of birth
2. employer's name and address
3. address where alleged unauthorized work took place
4. name of unauthorized worker, address, date of hire, date of birth
5. description of the facts and circumstances that led the complainant to conclude that the employee is not authorized
6. description of the facts and circumstances that led the complainant to conclude that the employer knew that the unauthorized worker was not legal

Mr. Cook clarified that to establish an "intentional or knowing violation" there must be some factual basis, and the complaint form is asking for as much information as possible to provide a starting point for an investigation.

Ms. Strunk stated that a complainant must be able to articulate reasons (other than language or displaying flags or such) for believing that an employee is unauthorized. She then asked about the penalty for filing false information with the police; Mr. Cook replied that the false information statute lists a Class I misdemeanor.

Mr. Nye stated his belief that there is an anomaly here in the standard of proof: enforcing the statute is a civil matter, requiring a preponderance of the evidence, but a Class I is a criminal matter requiring proof beyond a reasonable doubt. Mr. Bark replied that federal law preempts state law and prohibits criminal enforcement of employer sanctions.

Chairman Weiers reminded the committee that two topics are being discussed: the act of hiring illegal workers and the act of false reporting.

IMPACT OF HB2779 (Laws 2007, Chapter 279) ON CONTRACTORS AND SUBCONTRACTORS

Mr. Nye, as a representative of Sun Construction Company, stated that he is very interested in the application of this law because finding skilled labor is a big problem; he explained that the median age of construction craft workers in 1988 was 33 years, and has now increased to 39 years. He opined that his biggest concern with this bill is the effect it may have on the industry as it tries to find skilled workers (Attachment 2).

Mr. Sanders asked how this law will apply to subcontractors.

Mr. Quinn explained that he does not know if he, as a contractor, would be in violation if one of his subcontractors hired unauthorized workers. He further explained that his company is incorporated in Delaware and only has franchises in Arizona.

Mr. Bark asked what “employment relationship” means and if independent contractors were excluded, as they are under federal law. Chairman Weiers added that his understanding is that E-Verify cannot be run unless the employer is hiring someone, not contracting that person.

Mr. Quinn stated that if a contract is signed at the corporate level, he does not know what business entity is to be shut down if an illegal worker is used by a subcontractor.

Ms. Strunk stated that she concurs, that language is needed to define the employment relationship, and that what works in the immigration context may not work in workers’ compensation context.

Ms. Clarke asked if an out-of-state employer is required to use E-Verify; Chairman Weiers stated that he thought not but that further research is needed.

Mr. Quelland asked if an employer could obtain a competitive advantage by circumventing the law and how can that be avoided; Mr. Bibee replied that the subcontractor issue is not clearly defined and is a very critical piece of this issue.

Steve Moortel, Majority Research Analyst, addressed the out-of-state subcontractor issue and stated that E-Verify must be used if these three requirements are met:

1. the company transacts business in the state
2. the company holds a license issued by an agency of the state
3. the company employs one or more individuals to perform services in the state

DISCUSSION OF THE DEFINITION OF “KNOWINGLY” AS USED IN HB2779 (Laws 2007, Chapter 279)

Chairman Weiers introduced the topic of “knowingly” and distributed a document with information lifted from federal law (Attachment 3). He explained that federal law is very restrictive and that the only thing a state can do is lift the business license that it has granted. He discussed the impact of that single option.

Mr. Laird stated his concern with the constructive knowledge aspect of the law.

Chairman Weiers stated that “knowingly” is extremely hard to prove. He stated that this is the most difficult legislative issue in his experience and he reminded the committee that the goal here is to air views, not to solve problems. He stated that while he does not intend to run a bill, there may be recommendations from this committee that other legislators may incorporate into bills.

Mr. Sanders asked if the county attorneys have looked at or discussed the actual vs. constructive knowledge issue; Mr. Cook replied that constructive knowledge is imputed notice and can be used to prove actual knowledge and that the consensus appears to be that actual knowledge must be proved.

Mr. Laird stated that Mr. Cook's approach is reasonable, but that the state incorporates federal standard with allows constructive notice to be "knowing"; he stated his concern that the statute does allow constructive knowledge to amount to a violation. Mr. Cook reiterated his belief that the standard will be actual knowledge.

Ms. Strunk asked who, in a large corporation, the knowledge is imputed to; Mr. Cook replied that he did not know the answer to that. Mr. Nye stated his belief that the knowledge is imputed to the corporation, not to an individual.

Mr. Bark stated that statute says that "knowingly" means constructive as well as actual knowledge.

Mr. Cook commented that circumstantial evidence indicating actual knowledge would mean that the consensus interpretation seems to be actual knowledge.

Mr. Bark spoke of affirmative defense if there was an innocent mistake while doing I-9s.

DISCUSSION OF AGENDA ITEMS FOR NEXT MEETING

Ms. Strunk suggested that the definition of "license" be taken up at the next meeting. Chairman Weiers added the definition of "professional license".

Mr. Quinn requested that E-Verify be discussed as to how it affects a business which currently employs an unauthorized worker. Chairman Weiers stated that E-Verify is to be run on new hires only, and cannot be run on past and present employees. Mr. Quinn reiterated that his concern is identifying his liability if he has contractors and subcontractors which employ unauthorized workers.

PUBLIC TESTIMONY

There was none.

Without objection, the meeting adjourned at 4:49 p.m.

Jane Dooley, Committee Secretary
October 24, 2007

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov/>)

ARIZONA HOUSE OF REPRESENTATIVES

SPECIAL INTERIM MEETING NOTICE OPEN TO THE PUBLIC

AD HOC COMMITTEE ON BUSINESS OWNERS AND WORK SITE ENFORCEMENT

Date: Thursday, November 1, 2007

Time: 3:00 P.M.

Place: HHR 4

AGENDA

1. Call to Order
2. Presentation by Maricopa County Attorney's Office on handling of complaints as described by HB2779 (Laws 2007, Chapter 279)
3. Discussion of Licenses as defined by HB2779 (Laws 2007, Chapter 279)
4. Public Testimony
5. Closing Remarks

Members:

Representative Jim Weiers, Chair
Richard Bark
Richard Bibee
Jolynn Clarke
Ed Cook
Tim Dunn
Mitch Laird
Jason LeVecke

Randall Nye
Doug Quelland
Pat Quinn
Armando Rios
Ken Rosevear
Todd Sanders
Sarah Strunk

10/30/07
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ARIZONA STATE LEGISLATURE
Forty-eighth Legislature – First Regular Session

**AD HOC COMMITTEE ON BUSINESS OWNERS
AND WORK SITE ENFORCEMENT**

Minutes of Special Interim Meeting
Wednesday, November 1, 2007
House Hearing Room 4 -- 3:00 p.m.

Chairman Weiers called the meeting to order at 3:06 p.m. and attendance was noted by the secretary.

Members Present

Representative Jim Weiers, Chair	Randall Nye
Richard Bibee	Doug Quelland
Jolynn Clark	Ken Rosevear
Tim Dunn	Todd Sanders
Mitch Laird	Sarah Strunk

Members Absent

Richard Bark	Pat Quinn
Ed Cook	Armando Rios
Jason LeVecke	

Speakers Present

Mark Faull, Maricopa County Attorney's Office
Tom Barnett, representing himself
Sheridan Bailey, small business owner

**PRESENTATION BY MARICOPA COUNTY ATTORNEY'S OFFICE ON HANDLING
OF COMPLAINTS AS DESCRIBED BY HB2779 (LAWS 2007, CHAPTER 279)**

Mark Faull, Maricopa County Attorney's Office, described his office's full enforcement of 2005's Human Smuggling Act by working with Immigration and Customs Enforcement (ICE) agents and Maricopa County Sheriff Joe Arpaio's Illegal Immigration Interdiction (III) unit. Mr. Faull stated that he will work in a similar fashion to enforce HB2779 (Laws 2007, Chapter 279) and to handle associated complaints and investigations.

He then stated that the Maricopa County Attorney's office is waiting for U.S. District Court Judge Neil Wake's ruling on HB2779 (Laws 2007, Chapter 279) before making any public statements about the design of the complaint process and how his office will work with

businesses. He explained that they will work slowly to define compliance and policies, and would not speak publicly about this for probably six more weeks.

Mr. Laird stated that the other fourteen counties have already worked to build fairness and consistency into their complaint process response and that he had drafted a letter with recommended language for a specific complaint process. He requested a motion be put to vote regarding the language.

Chairman Weiers replied that he had just received Mr. Laird's letter and that the committee cannot vote at this time, but that much of what is in the letter makes sense and can be incorporated into a comprehensive publication to distribute to the Legislature and the Executive.

Chairman Weiers reiterated that he will not personally introduce legislation, that he is not controlling the committee or the process, and that he does wish to ensure that businesses are protected from overregulation and heavy-handedness. He stated his belief that this is the most important piece of legislation passed by any Legislature that he has served in.

Mr. Laird stated his belief that this committee was to make recommendations and Chairman Weiers reminded him that those recommendations will be contained in the published report.

Mr. Laird asked if the committee would make motions and take votes. Chairman Weiers replied that the intent of the committee was not to take votes but to present information for the Executive and the Legislature. He added that, hopefully, what would come out of these meetings is reasoning as to why things need to be changed in order to make this a better piece of legislation. He assured Mr. Laird that his suggestions will be in the report.

Chairman Weiers asked Mr. Faull if he had seen the two-page complaint form distributed by Arizona Prosecuting Attorneys Advisory Council (APAAC); Mr. Faull replied that he had seen a form from Pima County. Chairman Weiers stated that he thought that this was the form agreed upon by the fourteen other counties and presented by Mr. Cook of APAAC at the previous meeting. Mr. Faull indicated that he was not aware of that consensus nor was he in meetings which developed the complaint form.

Chairman Weiers stated that there cannot be inconsistency among the counties with their application of the law, and he stated his concern that there could be confusion between Maricopa County and the fourteen other counties. He stated that it may be necessary to put into statute a standardized form that all must use.

Mr. Faull stated that it is the prerogative of the legislature to do that, but that he noticed some inconsistencies already with the form, such as questions about incomplete submittals. He explained that his office enforces criminal and civil laws and that anonymous informants are routine in criminal investigations and that he would not want to create artificial barriers for someone providing information. He stated that his office evaluates every complaint based on the information submitted and does not want to discourage someone by threatening false reporting or frivolous reporting. He stated that false information can result in prosecution, but that is not stressed up front.

Chairman Weiers reiterated that this issue must be addressed with legislation.

Discussion ensued between Ms. Strunk and Mr. Faull regarding civil complaints, criminal complaints, false information, and how charges could result in these instances.

Mr. Laird asked how the sheriff's office would be involved in civil cases and Mr. Faull explained that they would follow the defined ICE process, but that much discussion must occur to define this protocol. Mr. Faull stated that there will be two access points to the process, through either the County Attorney or the Sheriff's Office, and that complaints will be evaluated and discussion would occur about how to proceed. He stated that all parties will have to work together closely to effect legislative intent, in a manner similar to the Human Smuggling Act.

Mr. Laird asked Mr. Faull if he would follow the same complaint process as the other fourteen counties; Mr. Faull replied that the issue of anonymous complaints will be handled differently, and cited the example of the Human Smuggling Act, which Maricopa County is aggressively using, as differentiated from the other fourteen counties.

Mr. Quelland stated that the public on January 1st of 2008 will assume that this law is fully implemented and asked what will happen with complaints coming in on January 2nd. Mr. Faull replied that his office is waiting on Judge Wake's decision, and that many other agencies and businesses are also waiting; he concurred that there will be some tension in the first month of this law, but that a six month rollout was anticipated for businesses to come into compliance.

Chairman Weiers asked if Maricopa County has received any complaints at this time; Mr. Faull stated that he did not know. Chairman Weiers suggested that Maricopa County begin to devise a complaint process and not wait for the Judge; Mr. Faull replied that Maricopa County Attorney Andrew Thomas is in charge and that his office is prepared to enforce the illegal workers act. He further clarified that work has been done on the complaint and enforcement process, but that he is not prepared to discuss this publicly yet.

Mr. Dunn stated that business owners would like to know what the complaint process will be and how the counties will handle it. He stated that some employees are getting checked several times a day, and may decide to go elsewhere to work.

Chairman Weiers reminded the committee that those comments are ones that will be included in the report.

Mr. Sanders stated that the Chamber has gotten feedback that some individuals now go to a work site and complain about everyone speaking Spanish, and he expressed concern that Maricopa County cannot tell him anything about how race-based complaints will be handled. Mr. Faull replied that whatever process is designed will not discriminate based on race or language, and that while motivation is hard to discern, safeguards are in place. He stated his opinion that a form will not solve that issue.

Mr. Sanders asked if Maricopa County will investigate all complaints; Mr. Faull replied in the negative, that they would not investigate all complaints. Mr. Sanders asked where the authority to investigate is under this statute; Mr. Faull replied that the county authorities have that

authority and can use ICE-qualified investigators, particularly if a county has few investigative resources. Discussion ensued about clarifying in statute any restrictions as to the use of different methods for investigation and compelling cooperation.

Mr. Rosevear inquired about the expectations of an employer who must hire an attorney to defend his or her business and may face difficulties with financing sources. He stated that quick and fair adjudication is important, but that rural counties are not treated fairly because they are not funded like Maricopa and do not have the resources.

Ms. Strunk commented that businesses are not waiting for the judge's decision, that they expect the law to be implemented, and she stressed the importance of providing clarification to business owners.

Mr. Bibee asked if Maricopa County will be investigating all anonymous and/or frivolous complaints; Mr. Faull replied in the negative, stating that some complaints have merit and some do not.

Chairman Weiers asked for his definition of a frivolous complaint; Mr. Faull replied that it is defined by law, and that guides his office. Discussion ensued about how a complaint could be deemed frivolous if it is not investigated, and how a complaint could be re-categorized from frivolous to false without investigation. Mr. Faull stated that a false claim is one that the complainant knows is false when he or she submits it, and that this is based on case law, not statute.

Mr. Sanders asked what business owners should know about submitting these claims; Mr. Faull replied that if they are "good actors" they will have nothing to fear. He further clarified that there is not a penalty for submitting a frivolous complaint.

Mr. Nye spoke about the standard of proof required for false complaint and constructive knowledge.

Mr. Faull issued a correction to his previous comments: "A person who knowingly files a false and frivolous complaint is guilty of a Class III misdemeanor." He stated that this appears to be creating a new criminal violation.

Chairman Weiers asked if a frivolous complaint is not investigated, how can it be determined to be false; Mr. Faull replied that if something is frivolous on its face, it would not be investigated.

DISCUSSION OF LICENSES AS DEFINED BY HB2779 (LAWS 2007, CHAPTER 279)

Ms. Strunk stated that she has concerns about some of the language in the bill, specifically the definitions and the unintended consequences that could result. She explained that in the bill the definition of *license* has been expanded well beyond its normal accepted definition, which is a license that is granted by competent authority to engage in a business occupation or activity that would otherwise be unlawful. She stated that Articles of Incorporation, Certificates of Partnership or other organizational documents do not fit that normal understanding of the word

license. She explained that including these in the bill and having them subject to being revoked could result in:

1. businesses losing their limited liability shield and deciding to re-form outside the state of Arizona, with resultant loss of revenue to the state
2. disclosure of capital investment, which may not be desirable to businesses
3. no provision that calls for suspension of these types of organizational documents, because they are not licenses, nor is it clear what revocation would mean to these documents

Chairman Weiers asked for an example of suspension; Ms. Strunk reiterated that it is not clear what the law does because there is no such thing as a suspension of Articles of Incorporation in business law. She stated that perhaps the Corporation Commission could declare a business “not in good standing” but that this could affect financing. Mr. Nye stated that he, too, did not understand how Articles of Incorporation could be suspended.

Ms. Strunk stated that her other concerns include:

- transaction privilege licenses – it seems unwise to suspend these, as Arizona would want these taxes paid, no matter what happens to the business
- professional licenses definition – it is vague and unclear in this law, and the range of professions is extremely broad

Mr. Sanders asked if there was a way to carve out certain business locations within a corporation; Ms. Strunk replied that there is not, that all locations would be affected even though the violation occurred at one location. She reiterated that Articles of Incorporation are not licenses and were never intended to be licenses.

Mr. Quelland asked about the revenue that would be affected if businesses move out-of-state; Ms. Strunk replied that the quantity is not known, but that there would be some effect.

Ms. Clarke expressed concern about the licenses of critical services such as schools, utilities and hospitals, and asked if those could be suspended by this law. Mr. Quelland replied that if the license of a school district is pulled, then the county takes over the district.

Mr. Laird asked again about making a motion to recommend his draft of proposed changes to the Legislature; Chairman Weiers suggested distribution to the committee members at this time (Attachment 1) and stated that these will be part of the final published report of recommendations.

Mr. Dunn expressed his concern that if the Articles of Incorporation are suspended, banks could call the notes on the corporation and put it out of business.

Mr. Bibee asked about reviewing the final report; Chairman Weiers replied that there will be a draft released first, which will include all the recommendations, and that the committee members will be able to review it before release to the Legislature. He stated his belief that the report will be thoroughly read by the legislators.

Mr. Laird presented an explanation of Attachment 1:

- pages 1 & 2 – changes definitions of *employee*, *subcontractor*, and *independent contractor* to more closely match federal definition

Mr. Sanders stated that that addresses Mr. Quinn’s question and that an employer is not responsible for subcontractors. Mr. Dunn stated that is very important.

- pages 3 & 4 – addresses the definition of *knowingly* by limiting to *actual knowledge* and thus to address liability
- page 5 – re-defines *license* and deletes such things as the Articles of Incorporation
- page 6 – clarifies complaint process and puts in safeguards similar to the other fourteen county attorneys; addresses the penalties for frivolous and false complaints
- page 7 – addresses the *standard of proof* issue

Mr. Nye commented that the state ought to do more before it puts a company out of business.

- pages 8, 9, 10, & 11 – deals with location-specific sanctions in order to avoid affecting an entire, multi-location company

Chairman Weiers asked how the law could be site-specific; Mr. Laird gave an example of a health license. Ms. Strunk stated that there is still confusion about location-specific licenses and general licenses. Mr. Laird commented that the fair thing would be to make it location-specific. Ms. Strunk concurred, suggesting it say “if there is no site-specific license, then the state would move up to the general license.”

- page 12 – addresses the inaccurate reference to 8 United States Code 1324a(b)

PUBLIC TESTIMONY

Tom Barnett, representing himself, addressed the committee to ask rhetorically if the State of Arizona was really willing to shut down the Phoenix Suns, or the Arizona Diamondbacks, or a hospital, or Shamrock Foods which employs 50,000 people. He reminded the committee of all the concession sales, the sales tax revenue, the income taxes, and all other revenue which would be lost.

Sheridan Bailey, small business owner, addressed the committee to provide an historical context about civil regard and fairness and the sanctity of property rights. He stated that the state cannot take away a resident’s source of income and his belief that this law imposes penalties that encroach on economic property rights in a manner so severe as to rise to a criminal offense.

Mr. Bailey suggested a graduated response, one in which the punishment would fit the crime; he stated that this law would allow one or two people to shut down a business. He stressed his opinion that this is a dangerous piece of legislation.

Chairman Weiers asked what would be his solution; Mr. Bailey stated that state legislators should use their time to persuade the Federal government, which has proper jurisdiction over immigration, to act.

Chairman Weiers stated that Arizona is preempting Federal law, but is prohibited by Federal law from fining; it can only revoke licenses. Mr. Bailey replied that the nature of the penalties is his greatest concern and he urged graduated penalties, such as a graduated tax penalty for companies violating the hiring law.

Without objection, the meeting adjourned at 5:01 p.m.

Jane Dooley, Committee Secretary
November 1, 2007

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov/>)