

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## HB 2745

Introduced by  
Representatives Pearce, Barnes, Farnsworth, Kavanagh, Nelson, Weiers JP,  
Yarbrough, Senators Blendu, Johnson: Representatives Anderson, Barto,  
Biggs, Boone, Burges, Clark, Crandall, Crump, DeSimone, Groe, Murphy,  
Nichols, Robson, Stump, Tobin, Weiers J, Senators Burns, Flake, Gray C,  
Gray L, Verschoor

### AN ACT

AMENDING SECTIONS 13-2008, 13-2010, 23-211, 23-212 AND 23-214, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-215; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 13-2008, Arizona Revised Statutes, is amended to  
3 read:  
4 13-2008. Taking identity of another person or entity:  
5 classification: definition  
6 A. A person commits taking the identity of another person or entity if  
7 the person knowingly takes, purchases, manufactures, records, possesses or  
8 uses any personal identifying information or entity identifying information  
9 of another person or entity, including a real or fictitious person or entity,  
10 without the consent of that other person or entity, with the intent to obtain  
11 or use the other person's or entity's identity for any unlawful purpose or to  
12 cause loss to a person or entity whether or not the person or entity actually  
13 suffers any economic loss as a result of the offense, **OR WITH THE INTENT TO**  
14 **OBTAIN OR CONTINUE EMPLOYMENT.**  
15 B. **EXCEPT AS PROVIDED IN SUBSECTION E, A PERSON COMMITS TAKING THE**  
16 **IDENTITY OF ANOTHER PERSON IF THE PERSON KNOWINGLY POSSESSES OR USES FOR ANY**  
17 **PURPOSE IDENTIFICATION THAT PURPORTS TO HAVE BEEN ISSUED BY A GOVERNMENT**  
18 **AGENCY AND THE PERSON KNEW OR SHOULD HAVE KNOWN THAT THE GOVERNMENT AGENCY**  
19 **DID NOT OR WOULD NOT HAVE AUTHORIZED THE ISSUANCE OF THE IDENTIFICATION.**  
20 ~~B.~~ C. On the request of a person or entity, a peace officer in any  
21 jurisdiction in which an element of the offense is committed, a result of the  
22 offense occurs or the person or entity whose identity is taken resides or is  
23 located shall take a report. The peace officer may provide a copy of the  
24 report to any other law enforcement agency that is located in a jurisdiction  
25 in which a violation of this section occurred.  
26 ~~C.~~ D. If a defendant is alleged to have committed multiple violations  
27 of this section within the same county, the prosecutor may file a complaint  
28 charging all of the violations and any related charges under other sections  
29 that have not been previously filed in any precinct in which a violation is  
30 alleged to have occurred. If a defendant is alleged to have committed  
31 multiple violations of this section within the state, the prosecutor may file  
32 a complaint charging all of the violations and any related charges under  
33 other sections that have not been previously filed in any county in which a  
34 violation is alleged to have occurred.  
35 ~~D.~~ E. This section does not apply to a violation of section 4-241 by  
36 a person who is under twenty-one years of age. **IT IS A DEFENSE TO A**  
37 **PROSECUTION UNDER SUBSECTION B IF THE PERSON WAS TWENTY YEARS OF AGE OR**  
38 **YOUNGER AT THE TIME OF THE COMMISSION OF THE OFFENSE AND THE PERSON POSSESSED**  
39 **IDENTIFICATION PURPORTING TO HAVE BEEN ISSUED BY A GOVERNMENT AGENCY IF THE**  
40 **POSSESSION WAS SOLELY FOR THE PURPOSE OF COMMITTING A VIOLATION OF SECTION**  
41 **4-241.**  
42 ~~E.~~ F. Taking the identity of another person or entity **OR KNOWINGLY**  
43 **ACCEPTING THE IDENTITY OF ANOTHER PERSON** is a class 4 felony.

1 G. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT AGENCY" INCLUDES ANY  
2 AGENCY OR ADMINISTRATIVE ENTITY OF THE UNITED STATES, ANY NATION, ANY STATE  
3 OR ANY POLITICAL SUBDIVISION OF THE UNITED STATES, ANY NATION OR ANY STATE.

4 Sec. 2. Section 13-2010, Arizona Revised Statutes, is amended to read:  
5 13-2010. Trafficking in the identity of another person or  
6 entity; classification

7 A. A person commits trafficking in the identity of another person or  
8 entity if the person knowingly sells, transfers or transmits any personal  
9 identifying information or entity identifying information of another person  
10 or entity, including a real or fictitious person or entity, without the  
11 consent of the other person or entity for any unlawful purpose or to cause  
12 loss to the person or entity whether or not the other person or entity  
13 actually suffers any economic loss, OR ALLOWING ANOTHER PERSON TO OBTAIN OR  
14 CONTINUE EMPLOYMENT.

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

17 C. Trafficking in the identity of another person or entity is a  
18 class 2 felony.

19 Sec. 3. Section 23-211, Arizona Revised Statutes, is amended to read:  
20 23-211. Definitions

21 In this article, unless the context otherwise requires:

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

25 ~~3-~~ 2. "Employee":

26 (a) Means any person who ~~performs employment~~ PROVIDES services OR  
27 LABOR for an employer ~~pursuant to an employment relationship between the~~  
28 ~~employee and employer~~ IN THIS STATE FOR WAGES OR OTHER REMUNERATION.

29 (b) DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR.

30 ~~4-~~ 3. "Employer" means any individual or type of organization that  
31 transacts business in this state, ~~that~~ WHETHER OR NOT THE INDIVIDUAL OR  
32 ORGANIZATION has a license issued by an agency in this state, and that  
33 employs one or more ~~individuals who perform employment services~~ EMPLOYEES in  
34 this state. Employer includes this state, any political subdivision of this  
35 state and self-employed persons. IN THE CASE OF AN INDEPENDENT CONTRACTOR,  
36 EMPLOYER MEANS THE INDEPENDENT CONTRACTOR AND DOES NOT MEAN THE PERSON OR  
37 ORGANIZATION THAT USES THE CONTRACT LABOR.

38 ~~2-~~ 4. "~~Basic pilot~~ E-VERIFY program" means the ~~basic~~ employment  
39 verification pilot program as jointly administered by the United States  
40 department of homeland security and the social security administration or ANY  
41 OF its successor ~~program~~ PROGRAMS.

42 5. "INDEPENDENT CONTRACTOR" MEANS ANY INDIVIDUAL OR ENTITY THAT  
43 CARRIES ON AN INDEPENDENT BUSINESS, THAT CONTRACTS TO DO A PIECE OF WORK  
44 ACCORDING TO THE INDIVIDUAL'S OR ENTITY'S OWN MEANS AND METHODS AND THAT IS  
45 SUBJECT TO CONTROL ONLY AS TO RESULTS. WHETHER AN INDIVIDUAL OR ENTITY IS AN

1 INDEPENDENT CONTRACTOR IS DETERMINED ON A CASE-BY-CASE BASIS THROUGH VARIOUS  
2 FACTORS, INCLUDING WHETHER THE INDIVIDUAL OR ENTITY:  
3 (a) SUPPLIES THE TOOLS OR MATERIALS.  
4 (b) MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC.  
5 (c) WORKS FOR A NUMBER OF CLIENTS AT THE SAME TIME.  
6 (d) HAS AN OPPORTUNITY FOR PROFIT OR LOSS AS A RESULT OF LABOR OR  
7 SERVICE PROVIDED.  
8 (e) INVESTS IN THE FACILITIES FOR WORK.  
9 (f) DIRECTS THE ORDER OR SEQUENCE IN WHICH THE WORK IS COMPLETED.  
10 (g) DETERMINES THE HOURS WHEN THE WORK IS COMPLETED.  
11 ~~5-~~ 6. "Intentionally" has the same meaning prescribed in section  
12 13-105.  
13 ~~6-~~ 7. "Knowingly employ an unauthorized alien" means the actions  
14 described in 8 United States Code section 1324a. This term shall be  
15 interpreted consistently with 8 United States Code section 1324a and any  
16 applicable federal rules and regulations.  
17 ~~7-~~ 8. "License":  
18 (a) Means any agency permit, certificate, approval, registration,  
19 charter or similar form of authorization that is required by law and that is  
20 issued by any agency for the purposes of operating a business in this state.  
21 (b) Includes:  
22 (i) Articles of incorporation under title 10.  
23 (ii) A certificate of partnership, a partnership registration or  
24 articles of organization under title 29.  
25 (iii) A grant of authority issued under title 10, chapter 15.  
26 (iv) Any transaction privilege tax license.  
27 (c) Does not include:  
28 (i) Any license issued pursuant to title 45 or 49 or rules adopted  
29 pursuant to those titles.  
30 (ii) Any professional license.  
31 ~~8-~~ 9. "Unauthorized alien" means an alien who does not have the legal  
32 right or authorization under federal law to work in the United States as  
33 described in 8 United States Code section 1324a(h)(3).  
34 Sec. 4. Section 23-212, Arizona Revised Statutes, is amended to read:  
35 23-212. Employment of unauthorized aliens; prohibition; false  
36 and frivolous complaints; violation; classification;  
37 license suspension and revocation; affirmative  
38 defense  
39 A. An employer shall not intentionally employ an unauthorized alien or  
40 knowingly employ an unauthorized alien. AN EMPLOYER VIOLATES THIS SUBSECTION  
41 IF THE EMPLOYER USES A CONTRACT OR SUBCONTRACT TO OBTAIN THE LABOR OF AN  
42 ALIEN IN THIS STATE KNOWING THAT THE ALIEN IS AN UNAUTHORIZED ALIEN WITH  
43 RESPECT TO PERFORMING THE LABOR.  
44 B. THE ATTORNEY GENERAL SHALL PRESCRIBE A COMPLAINT FORM FOR A PERSON  
45 TO ALLEGE A VIOLATION OF SUBSECTION A. THE COMPLAINANT SHALL NOT BE REQUIRED

1 TO LIST THE COMPLAINANT'S SOCIAL SECURITY NUMBER ON THE COMPLAINT FORM OR TO  
2 HAVE THE COMPLAINT FORM NOTARIZED. On receipt of a complaint ON A PRESCRIBED  
3 COMPLAINT FORM that an employer allegedly intentionally employs an  
4 unauthorized alien or knowingly employs an unauthorized alien, the attorney  
5 general or county attorney shall investigate whether the employer has  
6 violated subsection A. IF A COMPLAINT IS RECEIVED BUT IS NOT SUBMITTED ON A  
7 PRESCRIBED COMPLAINT FORM, THE ATTORNEY GENERAL OR COUNTY ATTORNEY MAY  
8 INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A. THIS SUBSECTION  
9 SHALL NOT BE CONSTRUED TO PROHIBIT THE FILING OF ANONYMOUS COMPLAINTS THAT  
10 ARE NOT SUBMITTED ON A PRESCRIBED COMPLAINT FORM. THE ATTORNEY GENERAL OR  
11 COUNTY ATTORNEY SHALL NOT INVESTIGATE COMPLAINTS THAT ARE BASED SOLELY ON  
12 RACE, COLOR OR NATIONAL ORIGIN. A COMPLAINT THAT IS SUBMITTED TO A COUNTY  
13 ATTORNEY SHALL BE SUBMITTED TO THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE  
14 ALLEGED UNAUTHORIZED ALIEN IS OR WAS EMPLOYED. THE COUNTY SHERIFF OR ANY  
15 OTHER LOCAL LAW ENFORCEMENT AGENCY MAY ASSIST IN INVESTIGATING A COMPLAINT.  
16 When investigating a complaint, the attorney general or county attorney shall  
17 verify the work authorization of the alleged unauthorized alien with the  
18 federal government pursuant to 8 United States Code section 1373(c). A  
19 state, county or local official shall not attempt to independently make a  
20 final determination on whether an alien is authorized to work in the United  
21 States. An alien's immigration status or work authorization status shall be  
22 verified with the federal government pursuant to 8 United States Code section  
23 1373(c). A person who knowingly files a false and frivolous complaint under  
24 this subsection is guilty of a class 3 misdemeanor.

25 C. If, after an investigation, the attorney general or county attorney  
26 determines that the complaint is not frivolous AND FALSE:

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

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

31 3. The attorney general shall notify the appropriate county attorney  
32 to bring an action pursuant to subsection D if the complaint was originally  
33 filed with the attorney general.

34 D. An action for a violation of subsection A shall be brought against  
35 the employer by the county attorney in the county where the unauthorized  
36 alien employee is OR WAS employed BY THE EMPLOYER. The county attorney shall  
37 not bring an action against any employer for any violation of subsection A  
38 that occurs before January 1, 2008. A second violation of this section shall  
39 be based only on an unauthorized alien who is OR WAS employed by the employer  
40 after an action has been brought for a violation of subsection A.

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

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

2 1. For a first violation ~~during a three year period~~ that is a knowing  
3 violation of subsection A, the court:

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

6 (b) Shall order the employer to be subject to a three year  
7 probationary period **FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN**  
8 **PERFORMED WORK**. During the probationary period the employer shall file  
9 quarterly reports **IN THE FORM PROVIDED IN SECTION 23-722.01** with the county  
10 attorney of each new employee who is hired by the employer at the ~~specific~~  
11 **BUSINESS** location where the unauthorized alien performed work.

12 (c) Shall order the employer to file a signed sworn affidavit with the  
13 county attorney within three business days after the order is issued. The  
14 affidavit shall state that the employer has terminated the employment of all  
15 unauthorized aliens **IN THIS STATE** and that the employer will not  
16 intentionally or knowingly employ an unauthorized alien **IN THIS STATE**. The  
17 court shall order the appropriate agencies to suspend all licenses subject to  
18 this subdivision that are held by the employer if the employer fails to file  
19 a signed sworn affidavit with the county attorney within three business days  
20 after the order is issued. All licenses that are suspended under this  
21 subdivision shall remain suspended until the employer files a signed sworn  
22 affidavit with the county attorney. Notwithstanding any other law, on filing  
23 of the affidavit the suspended licenses shall be reinstated immediately by  
24 the appropriate agencies. For the purposes of this subdivision, the licenses  
25 that are subject to suspension under this subdivision are all licenses that  
26 are held by the employer ~~and that are necessary to operate the employer's~~  
27 ~~business at the employer's~~ **SPECIFIC TO THE** business location where the  
28 unauthorized alien performed work. If ~~a license is not necessary to operate~~  
29 ~~the employer's business at~~ **THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO**  
30 the ~~specific~~ **BUSINESS** location where the unauthorized alien performed work,  
31 but a license is necessary to operate the employer's business in general, the  
32 licenses that are subject to suspension under this subdivision are all  
33 licenses that are held by the employer at the employer's primary place of  
34 business. On receipt of the court's order and notwithstanding any other law,  
35 the appropriate agencies shall suspend the licenses according to the court's  
36 order. The court shall send a copy of the court's order to the attorney  
37 general and the attorney general shall maintain the copy pursuant to  
38 subsection G.

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

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

1 (ii) Any prior misconduct by the employer.  
2 (iii) The degree of harm resulting from the violation.  
3 (iv) Whether the employer made good faith efforts to comply with any  
4 applicable requirements.  
5 (v) The duration of the violation.  
6 (vi) The role of the directors, officers or principals of the employer  
7 in the violation.  
8 (vii) Any other factors the court deems appropriate.  
9 2. For a first violation ~~during a five year period~~ that is an  
10 intentional violation of subsection A, the court shall:  
11 (a) Order the employer to terminate the employment of all unauthorized  
12 aliens.  
13 (b) Order the employer to be subject to a five year probationary  
14 period **FOR THE BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK.**  
15 During the probationary period the employer shall file quarterly reports **IN**  
16 **THE FORM PROVIDED IN SECTION 23-722.01** with the county attorney of each new  
17 employee who is hired by the employer at the ~~specific~~ **BUSINESS** location where  
18 the unauthorized alien performed work.  
19 (c) Order the appropriate agencies to suspend all licenses, ~~—~~ described  
20 in subdivision (d) of this paragraph that are held by the employer for a  
21 minimum of ten days. The court shall base its decision on the length of the  
22 suspension under this subdivision on any evidence or information submitted to  
23 it during the action for a violation of this subsection and shall consider  
24 the following factors, if relevant:  
25 (i) The number of unauthorized aliens employed by the employer.  
26 (ii) Any prior misconduct by the employer.  
27 (iii) The degree of harm resulting from the violation.  
28 (iv) Whether the employer made good faith efforts to comply with any  
29 applicable requirements.  
30 (v) The duration of the violation.  
31 (vi) The role of the directors, officers or principals of the employer  
32 in the violation.  
33 (vii) Any other factors the court deems appropriate.  
34 (d) Order the employer to file a signed sworn affidavit with the  
35 county attorney. The affidavit shall state that the employer has terminated  
36 the employment of all unauthorized aliens **IN THIS STATE** and that the employer  
37 will not intentionally or knowingly employ an unauthorized alien **IN THIS**  
38 **STATE.** All licenses that are suspended under this subdivision shall remain  
39 suspended until the employer files a signed sworn affidavit with the county  
40 attorney. For the purposes of this subdivision, the licenses that are  
41 subject to suspension under this subdivision are all licenses that are held  
42 by the employer ~~and that are necessary to operate the employer's business at~~  
43 ~~the employer's~~ **SPECIFIC TO THE** business location where the unauthorized alien  
44 performed work. If ~~a license is not necessary to operate the employer's~~  
45 ~~business at~~ **THE EMPLOYER DOES NOT HOLD A LICENSE SPECIFIC TO** the ~~specific~~

1 BUSINESS location where the unauthorized alien performed work, but a license  
 2 is necessary to operate the employer's business in general, the licenses that  
 3 are subject to suspension under this subdivision are all licenses that are  
 4 held by the employer at the employer's primary place of business. On receipt  
 5 of the court's order and notwithstanding any other law, the appropriate  
 6 agencies shall suspend the licenses according to the court's order. The  
 7 court shall send a copy of the court's order to the attorney general and the  
 8 attorney general shall maintain the copy pursuant to subsection G.

9 3. For a second violation of subsection A ~~during the period of~~  
 10 ~~probation~~, the court shall order the appropriate agencies to permanently  
 11 revoke all licenses that are held by the employer ~~and that are necessary to~~  
 12 ~~operate the employer's business at the employer's~~ SPECIFIC TO THE business  
 13 location where the unauthorized alien performed work. If ~~a license is not~~  
 14 ~~necessary to operate the employer's business at~~ THE EMPLOYER DOES NOT HOLD A  
 15 LICENSE SPECIFIC TO the ~~specific~~ BUSINESS location where the unauthorized  
 16 alien performed work, but a license is necessary to operate the employer's  
 17 business in general, the court shall order the appropriate agencies to  
 18 permanently revoke all licenses that are held by the employer at the  
 19 employer's primary place of business. On receipt of the order and  
 20 notwithstanding any other law, the appropriate agencies shall immediately  
 21 revoke the licenses.

22 4. THE VIOLATION SHALL BE CONSIDERED:

23 (a) A FIRST VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE  
 24 VIOLATION DID NOT OCCUR DURING A PROBATIONARY PERIOD ORDERED BY THE COURT  
 25 UNDER THIS SUBSECTION FOR THAT EMPLOYER'S BUSINESS LOCATION.

26 (b) A SECOND VIOLATION BY AN EMPLOYER AT A BUSINESS LOCATION IF THE  
 27 VIOLATION OCCURRED DURING A PROBATIONARY PERIOD ORDERED BY THE COURT UNDER  
 28 THIS SUBSECTION FOR THAT EMPLOYER'S BUSINESS LOCATION.

29 G. The attorney general shall maintain copies of court orders that are  
 30 received pursuant to subsection F and shall maintain a database of the  
 31 employers AND BUSINESS LOCATIONS who have a first violation of subsection A  
 32 and make the court orders available on the attorney general's website.

33 H. On determining whether an employee is an unauthorized alien, the  
 34 court shall consider only the federal government's determination pursuant to  
 35 8 United States Code section 1373(c). The federal government's determination  
 36 creates a rebuttable presumption of the employee's lawful status. The court  
 37 may take judicial notice of the federal government's determination and may  
 38 request the federal government to provide automated or testimonial  
 39 verification pursuant to 8 United States Code section 1373(c).

40 I. For the purposes of this section, proof of verifying the employment  
 41 authorization of an employee through the ~~basic pilot~~ E-VERIFY program creates  
 42 a rebuttable presumption that an employer did not intentionally employ an  
 43 unauthorized alien or knowingly employ an unauthorized alien.

44 J. For the purposes of this section, an employer who establishes that  
 45 it has complied in good faith with the requirements of 8 United States Code



1 section ~~1324b~~ 1324a(b) establishes an affirmative defense that the employer  
2 did not intentionally or knowingly employ an unauthorized alien. AN EMPLOYER  
3 IS CONSIDERED TO HAVE COMPLIED WITH THE REQUIREMENTS OF 8 UNITED STATES CODE  
4 SECTION 1324a(b), NOTWITHSTANDING AN ISOLATED, SPORADIC OR ACCIDENTAL  
5 TECHNICAL OR PROCEDURAL FAILURE TO MEET THE REQUIREMENTS, IF THERE IS A GOOD  
6 FAITH ATTEMPT TO COMPLY WITH THE REQUIREMENTS.

7 Sec. 5. Section 23-214, Arizona Revised Statutes, is amended to read:  
8 23-214. Verification of employment eligibility; E-verify  
9 program

10 After December 31, 2007, every employer, after hiring an employee,  
11 shall verify the employment eligibility of the employee through the ~~basic~~  
12 ~~pilot~~ E-VERIFY program.

13 Sec. 6. Title 23, chapter 2, article 2, Arizona Revised Statutes, is  
14 amended by adding section 23-215, to read:

15 23-215. Employer requirements; cash payments; unlawful  
16 practices; civil penalty

17 A. AN EMPLOYER THAT HAS TWO OR MORE EMPLOYEES AND PAYS HOURLY WAGES OR  
18 SALARY BY CASH TO ANY EMPLOYEE SHALL COMPLY WITH ALL OF THE FOLLOWING:

- 19 1. THE INCOME TAX WITHHOLDING LAWS PRESCRIBED IN TITLE 43, CHAPTER 4.
- 20 2. THE EMPLOYER REPORTING LAWS PRESCRIBED IN SECTION 23-722.01.
- 21 3. THE EMPLOYMENT SECURITY LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE.
- 22 4. THE WORKERS' COMPENSATION LAWS PRESCRIBED IN CHAPTER 6 OF THIS  
23 TITLE.

24 B. FOR A VIOLATION OF SUBSECTION A OF THIS SECTION, THE ATTORNEY  
25 GENERAL MAY BRING AN ACTION IN SUPERIOR COURT AGAINST AN EMPLOYER. ON A  
26 FINDING OF A VIOLATION OF SUBSECTION A OF THIS SECTION, THE COURT SHALL ORDER  
27 THE EMPLOYER TO PAY A CIVIL PENALTY THAT IS EQUAL TO TREBLE THE AMOUNT OF ALL  
28 WITHHOLDINGS, PAYMENTS, CONTRIBUTIONS OR PREMIUMS THAT THE EMPLOYER FAILED TO  
29 REMIT AS PRESCRIBED BY SUBSECTION A OF THIS SECTION OR FIVE THOUSAND DOLLARS  
30 FOR EACH EMPLOYEE FOR WHOM A VIOLATION WAS COMMITTED, WHICHEVER IS GREATER.

31 C. THE COURT SHALL TRANSMIT THE MONIES COLLECTED PURSUANT TO  
32 SUBSECTION B OF THIS SECTION TO THE STATE TREASURER, AND THE STATE TREASURER  
33 SHALL DEPOSIT THE MONIES IN THE STATE GENERAL FUND. MONIES DEPOSITED IN THE  
34 STATE GENERAL FUND PURSUANT TO THIS SUBSECTION SHALL BE EQUALLY APPROPRIATED  
35 TO THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HEALTH SERVICES FOR THE  
36 PURPOSES OF OFFSETTING INCREASED COSTS TO THIS STATE BY UNAUTHORIZED ALIENS.

37 D. THE CIVIL PENALTY UNDER THIS SECTION IS IN ADDITION TO ANY OTHER  
38 PENALTIES THAT MAY BE IMPOSED BY LAW.

39 Sec. 7. Title 41, chapter 6, Arizona Revised Statutes, is amended by  
40 adding article 7.2, to read:

41 ARTICLE 7.2. LICENSING ELIGIBILITY

42 41-1080. Licensing eligibility; lawful presence; verification;  
43 definitions

44 A. AN AGENCY SHALL NOT ISSUE A LICENSE TO ANY APPLICANT WHO IS  
45 UNLAWFULLY PRESENT OR UNLAWFULLY RESIDING IN THE UNITED STATES. BEFORE

1 ISSUING OR RENEWING A LICENSE, THE AGENCY SHALL VERIFY THAT THE APPLICANT IS  
2 LAWFULLY PRESENT IN THE UNITED STATES.

3 B. FOR THE PURPOSES OF THIS SECTION:

4 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS  
5 STATE OR A COUNTY, CITY OR TOWN THAT ISSUES A LICENSE FOR THE PURPOSES OF  
6 OPERATING A BUSINESS IN THIS STATE.

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

11 Sec. 8. Severability

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

17 Sec. 9. Legislative intent

18 A. The exclusion of independent contractors from the defined terms of  
19 employee and employer as prescribed in section 23-211, Arizona Revised  
20 Statutes, as amended by this act, shall not be construed to mean that  
21 independent contractors are currently included in those terms. The  
22 legislature is amending the definitions of employee and employer in this act  
23 for purposes of clarification.

24 B. The addition of the phrase "in this state" to the defined term of  
25 employee as prescribed in section 23-211, Arizona Revised Statutes, as  
26 amended by this act, shall not be construed to mean that out-of-state  
27 employees are currently included in this term. The legislature is amending  
28 the definition of employee in this act for the purposes of clarification.