

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1070

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1509; AMENDING SECTION 13-2319, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-2928 AND 13-2929; AMENDING SECTIONS 23-212, 23-212.01, 23-214 AND 28-3511, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1724; RELATING TO UNLAWFULLY PRESENT ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Intent

3 The legislature finds that there is a compelling interest in the
4 cooperative enforcement of federal immigration laws throughout all of
5 Arizona. The legislature declares that the intent of this act is to make
6 attrition through enforcement the public policy of all state and local
7 government agencies in Arizona. The provisions of this act are intended to
8 work together to discourage and deter the unlawful entry and presence of
9 aliens and economic activity by persons unlawfully present in the United
10 States.

11 Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by
12 adding article 8, to read:

13 ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

14 11-1051. Cooperation and assistance in enforcement of
15 immigration laws; indemnification

16 A. NO OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
17 OTHER POLITICAL SUBDIVISION OF THIS STATE MAY ADOPT A POLICY THAT LIMITS OR
18 RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL
19 EXTENT PERMITTED BY FEDERAL LAW.

20 B. FOR ANY LAWFUL CONTACT MADE BY A LAW ENFORCEMENT OFFICIAL OR AGENCY
21 OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS
22 STATE WHERE REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN WHO IS
23 UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE MADE,
24 WHEN PRACTICABLE, TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON. THE
25 PERSON'S IMMIGRATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT
26 PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

27 C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS
28 CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM
29 IMPRISONMENT OR ASSESSMENT OF ANY FINE THAT IS IMPOSED, THE ALIEN SHALL BE
30 TRANSFERRED IMMEDIATELY TO THE CUSTODY OF THE UNITED STATES IMMIGRATION AND
31 CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION.

32 D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY
33 SECURELY TRANSPORT AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES
34 AND WHO IS IN THE AGENCY'S CUSTODY TO A FEDERAL FACILITY IN THIS STATE OR TO
35 ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY THAT IS OUTSIDE THE
36 JURISDICTION OF THE LAW ENFORCEMENT AGENCY.

37 E. A LAW ENFORCEMENT OFFICER, WITHOUT A WARRANT, MAY ARREST A PERSON
38 IF THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS COMMITTED
39 ANY PUBLIC OFFENSE THAT MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

40 F. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF THIS
41 STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS
42 STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING,
43 RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS OF
44 ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH ANY OTHER FEDERAL, STATE
45 OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL PURPOSES:

1 1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR LICENSE
2 PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL SUBDIVISION OF THIS
3 STATE.

4 2. VERIFYING ANY CLAIM OF RESIDENCE OR DOMICILE IF DETERMINATION OF
5 RESIDENCE OR DOMICILE IS REQUIRED UNDER THE LAWS OF THIS STATE OR A JUDICIAL
6 ORDER ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS STATE.

7 3. CONFIRMING THE IDENTITY OF ANY PERSON WHO IS DETAINED.

8 4. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
9 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II, CHAPTER
10 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

11 G. A PERSON MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE ANY
12 OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL
13 SUBDIVISION OF THIS STATE THAT ADOPTS OR IMPLEMENTS A POLICY THAT LIMITS OR
14 RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL
15 EXTENT PERMITTED BY FEDERAL LAW. IF THERE IS A JUDICIAL FINDING THAT AN
16 ENTITY HAS VIOLATED THIS SECTION, THE COURT SHALL ORDER ANY OF THE FOLLOWING:

17 1. THAT THE PERSON WHO BROUGHT THE ACTION RECOVER COURT COSTS AND
18 ATTORNEY FEES.

19 2. THAT THE ENTITY PAY A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND
20 DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH DAY THAT THE POLICY
21 HAS REMAINED IN EFFECT AFTER THE FILING OF AN ACTION PURSUANT TO THIS
22 SUBSECTION.

23 H. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION G
24 AND REMIT THE CIVIL PENALTY TO THE DEPARTMENT OF PUBLIC SAFETY FOR DEPOSIT IN
25 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND
26 ESTABLISHED BY SECTION 41-1724.

27 I. A LAW ENFORCEMENT OFFICER IS INDEMNIFIED BY THE LAW ENFORCEMENT
28 OFFICER'S AGENCY AGAINST REASONABLE COSTS AND EXPENSES, INCLUDING ATTORNEY
29 FEES, INCURRED BY THE OFFICER IN CONNECTION WITH ANY ACTION, SUIT OR
30 PROCEEDING BROUGHT PURSUANT TO THIS SECTION TO WHICH THE OFFICER MAY BE A
31 PARTY BY REASON OF THE OFFICER BEING OR HAVING BEEN A MEMBER OF THE LAW
32 ENFORCEMENT AGENCY, EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS
33 ADJUDGED TO HAVE ACTED IN BAD FAITH.

34 J. THIS SECTION SHALL BE IMPLEMENTED IN A MANNER CONSISTENT WITH
35 FEDERAL LAWS REGULATING IMMIGRATION, PROTECTING THE CIVIL RIGHTS OF ALL
36 PERSONS AND RESPECTING THE PRIVILEGES AND IMMUNITIES OF UNITED STATES
37 CITIZENS.

38 Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended by
39 adding section 13-1509, to read:

40 13-1509. Trespassing by illegal aliens; assessment; exception;
41 classification

42 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY OF
43 TRESPASSING IF THE PERSON IS BOTH:

44 1. PRESENT ON ANY PUBLIC OR PRIVATE LAND IN THIS STATE.

45 2. IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR 1306(a).

1 B. IN THE ENFORCEMENT OF THIS SECTION, THE FINAL DETERMINATION OF AN
2 ALIEN'S IMMIGRATION STATUS SHALL BE DETERMINED BY EITHER:

3 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
4 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

5 2. A LAW ENFORCEMENT OFFICER OR AGENCY COMMUNICATING WITH THE UNITED
6 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES BORDER
7 PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

8 C. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE
9 FOR SUSPENSION OR COMMUTATION OF SENTENCE OR RELEASE ON ANY BASIS UNTIL THE
10 SENTENCE IMPOSED IS SERVED.

11 D. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL
12 ORDER THE PERSON TO PAY JAIL COSTS AND AN ADDITIONAL ASSESSMENT IN THE
13 FOLLOWING AMOUNTS:

14 1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.

15 2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION IF THE
16 PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS SUBSECTION.

17 E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D OF
18 THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC SAFETY,
19 WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT
20 ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT
21 MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO
22 LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND IMMIGRATION
23 ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL
24 IMMIGRATION.

25 F. THIS SECTION DOES NOT APPLY TO A PERSON WHO MAINTAINS AUTHORIZATION
26 FROM THE FEDERAL GOVERNMENT TO REMAIN IN THE UNITED STATES.

27 G. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT A
28 VIOLATION OF THIS SECTION IS:

29 1. A CLASS 3 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN
30 POSSESSION OF ANY OF THE FOLLOWING:

31 (a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.

32 (b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF
33 METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.

34 (c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN SECTION
35 13-105.

36 (d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF
37 TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.

38 2. A CLASS 4 FELONY IF THE PERSON EITHER:

39 (a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION.

40 (b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM
41 THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS
42 ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED
43 STATES CODE SECTION 1229c.

1 Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to read:
2 13-2319. Smuggling; classification; definitions

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

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

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

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

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

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

20 E. NOTWITHSTANDING ANY OTHER LAW, A PEACE OFFICER MAY LAWFULLY STOP
21 ANY PERSON WHO IS OPERATING A MOTOR VEHICLE IF THE OFFICER HAS REASONABLE
22 SUSPICION TO BELIEVE THE PERSON IS IN VIOLATION OF ANY CIVIL TRAFFIC LAW AND
23 THIS SECTION.

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

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

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

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

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

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

1 Sec. 5. Title 13, chapter 29, Arizona Revised Statutes, is amended by
2 adding sections 13-2928 and 13-2929, to read:

3 13-2928. Unlawful stopping to hire and pick up passengers for
4 work; unlawful application, solicitation or
5 employment; classification; definitions

6 A. IT IS UNLAWFUL FOR AN OCCUPANT OF A MOTOR VEHICLE THAT IS STOPPED
7 ON A STREET, ROADWAY OR HIGHWAY TO ATTEMPT TO HIRE OR HIRE AND PICK UP
8 PASSENGERS FOR WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR
9 IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

10 B. IT IS UNLAWFUL FOR A PERSON TO ENTER A MOTOR VEHICLE THAT IS
11 STOPPED ON A STREET, ROADWAY OR HIGHWAY IN ORDER TO BE HIRED BY AN OCCUPANT
12 OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK AT A DIFFERENT LOCATION IF
13 THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

14 C. IT IS UNLAWFUL FOR A PERSON WHO IS UNLAWFULLY PRESENT IN THE UNITED
15 STATES AND WHO IS AN UNAUTHORIZED ALIEN TO KNOWINGLY APPLY FOR WORK, SOLICIT
16 WORK IN A PUBLIC PLACE OR PERFORM WORK AS AN EMPLOYEE OR INDEPENDENT
17 CONTRACTOR IN THIS STATE.

18 D. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

19 E. FOR THE PURPOSES OF THIS SECTION:

20 1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE OR A
21 NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS WILLING TO BE
22 EMPLOYED.

23 2. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL
24 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS
25 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

26 13-2929. Unlawful transporting, moving, concealing, harboring
27 or shielding of unlawful aliens; vehicle
28 impoundment; classification

29 A. IT IS UNLAWFUL FOR A PERSON WHO IS IN VIOLATION OF A CRIMINAL
30 OFFENSE TO:

31 1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN THIS
32 STATE IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR RECKLESSLY
33 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE
34 UNITED STATES IN VIOLATION OF LAW.

35 2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR SHIELD
36 AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY BUILDING OR
37 ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE
38 FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES
39 IN VIOLATION OF LAW.

40 3. ENCOURAGE OR INDUCE AN ALIEN TO COME TO OR RESIDE IN THIS STATE IF
41 THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT SUCH COMING TO,
42 ENTERING OR RESIDING IN THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

43 B. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A
44 VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR
45 IMPOUNDMENT PURSUANT TO SECTION 28-3511.

1 C. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
2 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS, EXCEPT
3 THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL ALIENS IS
4 A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND
5 DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

6 Sec. 6. Section 23-212, Arizona Revised Statutes, is amended to read:

7 23-212. Knowingly employing unauthorized aliens; prohibition;
8 false and frivolous complaints; violation;
9 classification; license suspension and revocation;
10 affirmative defense

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

17 B. The attorney general shall prescribe a complaint form for a person
18 to allege a violation of subsection A of this section. The complainant shall
19 not be required to list the complainant's social security number on the
20 complaint form or to have the complaint form notarized. On receipt of a
21 complaint on a prescribed complaint form that an employer allegedly knowingly
22 employs an unauthorized alien, the attorney general or county attorney shall
23 investigate whether the employer has violated subsection A of this section.
24 If a complaint is received but is not submitted on a prescribed complaint
25 form, the attorney general or county attorney may investigate whether the
26 employer has violated subsection A of this section. This subsection shall
27 not be construed to prohibit the filing of anonymous complaints that are not
28 submitted on a prescribed complaint form. The attorney general or county
29 attorney shall not investigate complaints that are based solely on race,
30 color or national origin. A complaint that is submitted to a county attorney
31 shall be submitted to the county attorney in the county in which the alleged
32 unauthorized alien is or was employed by the employer. The county sheriff or
33 any other local law enforcement agency may assist in investigating a
34 complaint. When investigating a complaint, the attorney general or county
35 attorney shall verify the work authorization of the alleged unauthorized
36 alien with the federal government pursuant to 8 United States Code section
37 1373(c). A state, county or local official shall not attempt to
38 independently make a final determination on whether an alien is authorized to
39 work in the United States. An alien's immigration status or work
40 authorization status shall be verified with the federal government pursuant
41 to 8 United States Code section 1373(c). A person who knowingly files a
42 false and frivolous complaint under this subsection is guilty of a class 3
43 misdemeanor.

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

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

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

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

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

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

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

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

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

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

32 (c) Shall order the employer to file a signed sworn affidavit with the
33 county attorney within three business days after the order is issued. The
34 affidavit shall state that the employer has terminated the employment of all
35 unauthorized aliens in this state and that the employer will not
36 intentionally or knowingly employ an unauthorized alien in this state. The
37 court shall order the appropriate agencies to suspend all licenses subject to
38 this subdivision that are held by the employer if the employer fails to file
39 a signed sworn affidavit with the county attorney within three business days
40 after the order is issued. All licenses that are suspended under this
41 subdivision shall remain suspended until the employer files a signed sworn
42 affidavit with the county attorney. Notwithstanding any other law, on filing
43 of the affidavit the suspended licenses shall be reinstated immediately by
44 the appropriate agencies. For the purposes of this subdivision, the licenses
45 that are subject to suspension under this subdivision are all licenses that

1 are held by the employer specific to the business location where the
2 unauthorized alien performed work. If the employer does not hold a license
3 specific to the business location where the unauthorized alien performed
4 work, but a license is necessary to operate the employer's business in
5 general, the licenses that are subject to suspension under this subdivision
6 are all licenses that are held by the employer at the employer's primary
7 place of business. On receipt of the court's order and notwithstanding any
8 other law, the appropriate agencies shall suspend the licenses according to
9 the court's order. The court shall send a copy of the court's order to the
10 attorney general and the attorney general shall maintain the copy pursuant to
11 subsection G of this section.

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

- 18 (i) The number of unauthorized aliens employed by the employer.
- 19 (ii) Any prior misconduct by the employer.
- 20 (iii) The degree of harm resulting from the violation.
- 21 (iv) Whether the employer made good faith efforts to comply with any
22 applicable requirements.
- 23 (v) The duration of the violation.
- 24 (vi) The role of the directors, officers or principals of the employer
25 in the violation.
- 26 (vii) Any other factors the court deems appropriate.

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

38 3. The violation shall be considered:

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

43 (b) A second violation by an employer at a business location if the
44 violation occurred during a probationary period ordered by the court under

1 this subsection or section 23-212.01, subsection F for that employer's
2 business location.

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

8 H. On determining whether an employee is an unauthorized alien, the
9 court shall consider only the federal government's determination pursuant to
10 8 United States Code section 1373(c). The federal government's determination
11 creates a rebuttable presumption of the employee's lawful status. The court
12 may take judicial notice of the federal government's determination and may
13 request the federal government to provide automated or testimonial
14 verification pursuant to 8 United States Code section 1373(c).

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

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

27 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS
28 SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER
29 MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL
30 ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS
31 THE BURDEN OF PROVING THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

32 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT
33 OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

34 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
35 EMPLOYER TO COMMIT THE VIOLATION.

36 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE
37 LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO
38 COMMIT THE VIOLATION.

39 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
40 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT
41 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
42 COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR
43 THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT
44 OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING
45 IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

1 Sec. 7. Section 23-212.01, Arizona Revised Statutes, is amended to
2 read:

3 23-212.01. Intentionally employing unauthorized aliens;
4 prohibition; false and frivolous complaints;
5 violation; classification; license suspension and
6 revocation; affirmative defense

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

13 B. The attorney general shall prescribe a complaint form for a person
14 to allege a violation of subsection A of this section. The complainant shall
15 not be required to list the complainant's social security number on the
16 complaint form or to have the complaint form notarized. On receipt of a
17 complaint on a prescribed complaint form that an employer allegedly
18 intentionally employs an unauthorized alien, the attorney general or county
19 attorney shall investigate whether the employer has violated subsection A of
20 this section. If a complaint is received but is not submitted on a
21 prescribed complaint form, the attorney general or county attorney may
22 investigate whether the employer has violated subsection A of this section.
23 This subsection shall not be construed to prohibit the filing of anonymous
24 complaints that are not submitted on a prescribed complaint form. The
25 attorney general or county attorney shall not investigate complaints that are
26 based solely on race, color or national origin. A complaint that is
27 submitted to a county attorney shall be submitted to the county attorney in
28 the county in which the alleged unauthorized alien is or was employed by the
29 employer. The county sheriff or any other local law enforcement agency may
30 assist in investigating a complaint. When investigating a complaint, the
31 attorney general or county attorney shall verify the work authorization of
32 the alleged unauthorized alien with the federal government pursuant to
33 8 United States Code section 1373(c). A state, county or local official
34 shall not attempt to independently make a final determination on whether an
35 alien is authorized to work in the United States. An alien's immigration
36 status or work authorization status shall be verified with the federal
37 government pursuant to 8 United States Code section 1373(c). A person who
38 knowingly files a false and frivolous complaint under this subsection is
39 guilty of a class 3 misdemeanor.

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

- 42 1. The attorney general or county attorney shall notify the United
43 States immigration and customs enforcement of the unauthorized alien.
44 2. The attorney general or county attorney shall notify the local law
45 enforcement agency of the unauthorized alien.

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

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

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

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

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

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

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

26 (c) Order the appropriate agencies to suspend all licenses described
27 in subdivision (d) of this paragraph that are held by the employer for a
28 minimum of ten days. The court shall base its decision on the length of the
29 suspension under this subdivision on any evidence or information submitted to
30 it during the action for a violation of this subsection and shall consider
31 the following factors, if relevant:

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

33 (ii) Any prior misconduct by the employer.

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

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

37 (v) The duration of the violation.

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

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

41 (d) Order the employer to file a signed sworn affidavit with the
42 county attorney. The affidavit shall state that the employer has terminated
43 the employment of all unauthorized aliens in this state and that the employer
44 will not intentionally or knowingly employ an unauthorized alien in this
45 state. The court shall order the appropriate agencies to suspend all

1 licenses subject to this subdivision that are held by the employer if the
2 employer fails to file a signed sworn affidavit with the county attorney
3 within three business days after the order is issued. All licenses that are
4 suspended under this subdivision for failing to file a signed sworn affidavit
5 shall remain suspended until the employer files a signed sworn affidavit with
6 the county attorney. For the purposes of this subdivision, the licenses that
7 are subject to suspension under this subdivision are all licenses that are
8 held by the employer specific to the business location where the unauthorized
9 alien performed work. If the employer does not hold a license specific to
10 the business location where the unauthorized alien performed work, but a
11 license is necessary to operate the employer's business in general, the
12 licenses that are subject to suspension under this subdivision are all
13 licenses that are held by the employer at the employer's primary place of
14 business. On receipt of the court's order and notwithstanding any other law,
15 the appropriate agencies shall suspend the licenses according to the court's
16 order. The court shall send a copy of the court's order to the attorney
17 general and the attorney general shall maintain the copy pursuant to
18 subsection G of this section.

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

30 3. The violation shall be considered:

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

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

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

44 H. On determining whether an employee is an unauthorized alien, the
45 court shall consider only the federal government's determination pursuant to

1 8 United States Code section 1373(c). The federal government's determination
2 creates a rebuttable presumption of the employee's lawful status. The court
3 may take judicial notice of the federal government's determination and may
4 request the federal government to provide automated or testimonial
5 verification pursuant to 8 United States Code section 1373(c).

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

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

18 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS
19 SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER
20 MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL
21 ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS
22 THE BURDEN OF PROVING THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

23 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT
24 OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

25 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
26 EMPLOYER TO COMMIT THE VIOLATION.

27 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE
28 LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO
29 COMMIT THE VIOLATION.

30 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
31 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT
32 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
33 COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR
34 THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT
35 OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING
36 IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

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

38 23-214. Verification of employment eligibility; e-verify
39 program; economic development incentives; list of
40 registered employers

41 A. After December 31, 2007, every employer, after hiring an employee,
42 shall verify the employment eligibility of the employee through the e-verify
43 program AND SHALL KEEP A RECORD OF THE VERIFICATION FOR THE DURATION OF THE
44 EMPLOYEE'S EMPLOYMENT OR AT LEAST THREE YEARS, WHICHEVER IS LONGER.

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

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

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

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

25 Sec. 9. Section 28-3511, Arizona Revised Statutes, is amended to read:
26 28-3511. Removal and immobilization or impoundment of vehicle

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

30 1. The person's driving privilege is suspended or revoked for any
31 reason.

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

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

41 4. THE PERSON IS IN VIOLATION OF A CRIMINAL OFFENSE AND IS
42 TRANSPORTING, MOVING, CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING TO
43 TRANSPORT, MOVE, CONCEAL, HARBOR OR SHIELD AN ALIEN IN THIS STATE IN A
44 VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN
45 HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

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

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

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

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

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

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

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

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

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

28 (a) Has a valid driver license.

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

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

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

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

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

44 F. The owner of a vehicle that is removed and either immobilized or
45 impounded pursuant to subsection A, B or C of this section, the spouse of the

1 owner and each person identified on the department's record with an interest
2 in the vehicle shall be provided with an opportunity for an immobilization or
3 poststorage hearing pursuant to section 28-3514.

4 Sec. 10. Title 41, chapter 12, article 2, Arizona Revised Statutes, is
5 amended by adding section 41-1724, to read:

6 41-1724. Gang and immigration intelligence team enforcement
7 mission fund

8 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND IS
9 ESTABLISHED CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 11-1051 AND
10 MONIES APPROPRIATED BY THE LEGISLATURE. THE DEPARTMENT SHALL ADMINISTER THE
11 FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL
12 BE USED FOR GANG AND IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL
13 REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

14 Sec. 11. Severability, implementation and construction

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

20 B. The terms of this act regarding immigration shall be construed to
21 have the meanings given to them under federal immigration law.

22 C. This act shall be implemented in a manner consistent with federal
23 laws regulating immigration, protecting the civil rights of all persons and
24 respecting the privileges and immunities of United States citizens.

25 Sec. 12. Short title

26 This act may be cited as the "Support Our Law Enforcement and Safe
27 Neighborhoods Act".