

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment III

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-4746 (For: Rep. Pridemore)


has been transferred to the drafting file for

2011 LRB-1116 (For: Rep. Pridemore)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 02/22/2011 (Per: PJH)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

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:

use this

taken to ICE or similar

use this

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".

QUESTIONS TO BE ANSWERED LRB-4746/P1

1. What about the fines? How do you know that someone can't pay? What should we do if someone doesn't pay?
2. Data bases. - Do we need to mandate their use in these cases?
3. Does "Authorized by the federal government leave the door open for the fed's to derail the program?
4. What does local law enforcement do now when transporting prisoners? What is the cost?
5. Is there a baby step beyond Section 8 of the bill to eliminate profiling?
- 6.

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Conference Engrossed

**State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010**

HOUSE BILL 2162

AN ACT

AMENDING SECTIONS 1-501 AND 1-502, ARIZONA REVISED STATUTES; AMENDING SECTION 11-1051, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 2, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-1509, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 3, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-2928, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 5, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-2929, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 5, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; RELATING TO IMMIGRATION AND BORDER SECURITY; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 1-501, Arizona Revised Statutes, is amended to read:

1-501. Eligibility for federal public benefits; documentation; violation; classification; citizen suits; attorney fees; definition

A. Notwithstanding any other state law and to the extent permitted by federal law, any NATURAL person who applies for a federal public benefit that is administered by this state or a political subdivision of this state and that requires participants to be citizens of the United States, legal residents of the United States or otherwise lawfully present in the United States shall submit at least one of the following documents to the entity that administers the federal public benefit demonstrating lawful presence in the United States:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
3. A United States certificate of birth abroad.
4. A United States passport.
5. A foreign passport with a United States visa.
6. An I-94 form with a photograph.
7. A United States citizenship and Immigration services employment authorization document or refugee travel document.
8. A United States certificate of naturalization.
9. A United States certificate of citizenship.
10. A tribal certificate of Indian blood.
11. A tribal or bureau of Indian affairs affidavit of birth.

B. For the purposes of administering the Arizona health care cost containment system, documentation of citizenship and legal residence shall conform with the requirements of title XIX of the social security act.

C. To the extent permitted by federal law, an agency of this state or political subdivision of this state may allow tribal members, the elderly and persons with disabilities or incapacity of the mind or body to provide documentation as specified in section 6036 of the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu of the documentation required by this section.

D. Any person who applies for federal public benefits shall sign a sworn affidavit stating that the documents presented pursuant to subsection A OF THIS SECTION are true under penalty of perjury.

E. Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any federal public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

F. This section shall be enforced without regard to race, color, religion, sex, age, disability or national origin.

G. Any person who is a resident of this state has standing in any court of record to bring suit against any agent or agency of this state or its political subdivisions to remedy any violation of any provision of this section, including an action for mandamus. Courts shall give preference to actions brought under this section over other civil actions or proceedings pending in the court.

H. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

I. For the purposes of this section, "federal public benefit" has the same meaning prescribed in 8 United States Code section 1611.

Sec. 2. Section 1-502, Arizona Revised Statutes, is amended to read:

1-502. Eligibility for state or local public benefits; documentation; violation; classification; citizen suits; attorney fees; definition

A. Notwithstanding any other state law and to the extent permitted by federal law, any agency of this state or a political subdivision of this state that administers any state or local public benefit shall require each NATURAL person who applies for the state or local public benefit to submit at least one of the following documents to the entity that administers the state or local public benefit demonstrating lawful presence in the United States:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
3. A United States certificate of birth abroad.
4. A United States passport.
5. A foreign passport with a United States visa.
6. An I-94 form with a photograph.
7. A United States citizenship and immigration services employment authorization

document or refugee travel document.

8. A United States certificate of naturalization.

9. A United States certificate of citizenship.

10. A tribal certificate of Indian blood.

11. A tribal or bureau of Indian affairs affidavit of birth.

B. For the purposes of administering the Arizona health care cost containment system, documentation of citizenship and legal residence shall conform with the requirements of title XIX of the social security act.

C. To the extent permitted by federal law, an agency of this state or political subdivision of this state may allow tribal members, the elderly and persons with disabilities or incapacity of the mind or body to provide documentation as specified in section 6036 of the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu of the documentation required by this section.

D. Any person who applies for state or local public benefits shall sign a sworn affidavit stating that the documents presented pursuant to subsection A OF THIS SECTION are true under penalty of perjury.

E. Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any state or local public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

F. This section shall be enforced without regard to race, color, religion, sex, age, disability or national origin.

G. Any person who is a resident of this state has standing in any court of record to bring suit against any agent or agency of this state or its political subdivisions to remedy any violation of any provision of this section, including an action for mandamus. Courts shall give preference to actions brought under this section over other civil actions or proceedings pending in the court.

H. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

I. For the purposes of this section, "state or local public benefit" has the same meaning prescribed in 8 United States Code section 1621, except that it does not include commercial or professional licenses, or benefits provided by the public retirement systems and plans of this state OR SERVICES WIDELY AVAILABLE TO THE GENERAL POPULATION AS A WHOLE.

Sec. 3. Section 11-1051, Arizona Revised Statutes, as added by Senate Bill 1070, section 2, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

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

A. No official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

B. For any lawful ~~contact~~ STOP, DETENTION OR ARREST made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state IN THE ENFORCEMENT OF ANY OTHER LAW OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE where reasonable suspicion exists that the person is an alien who AND is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person's immigration status determined before the person is released. The person's immigration status shall be verified with the federal government pursuant to 8 United States code section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not solely consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid Arizona driver license.

2. A valid Arizona nonoperating Identification license.

3. A valid tribal enrollment card or other form of tribal identification.

4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

C. If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or on the assessment of any monetary obligation that is imposed, the United States immigration and customs enforcement or the United States customs and border protection shall be immediately notified.

D. Notwithstanding any other law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present in the United States and who

is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside of this state.

E. IN THE IMPLEMENTATION OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

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

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

F. Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

1. Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state.

2. Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state.

3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal Immigration and Nationality act.

4. Pursuant to 8 United States Code section 1373 and 8 United States Code section 1644.

G. This section does not implement, authorize or establish and shall not be construed to implement, authorize or establish the REAL ID act of 2005 (P.L. 109-13, division B; 119 Stat. 302), including the use of a radio frequency identification chip.

H. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a policy or practice that limits or restricts the enforcement of federal immigration laws, INCLUDING 8 UNITED STATES CODE SECTIONS 1373 AND 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than one thousand FIVE HUNDRED dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

I. A court shall collect the civil penalty prescribed in subsection G- H of this section and remit the civil penalty to the state treasurer for deposit in the gang and immigration intelligence team enforcement mission fund established by section 41-1724.

J. The court may award court costs and reasonable attorney fees to any person or any official or agency of this state or a county, city, town or other political subdivision of this state that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

K. Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

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

Sec. 4. Section 13-1509, Arizona Revised Statutes, as added by Senate Bill 1070, section 3, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

13-1509. Willful failure to complete or carry an alien registration document; assessment; exception; authenticated records; classification

A. In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 United States Code section 1304(e) or 1306(a).

B. In the enforcement of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 United States Code section 1373(c).

C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

D. A person who is sentenced pursuant to this section is not eligible for suspension of

sentence, probation, pardon, commutation of sentence, or release from confinement on any basis except as authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or the person is eligible for release pursuant to section 41-1604.07.

~~D. E.~~ In addition to any other penalty prescribed by law, the court shall order the person to pay jail costs. ~~and an additional assessment in the following amounts:~~

~~1. At least five hundred dollars for a first violation;~~

~~2. Twice the amount specified in paragraph 1 of this subsection if the person was previously subject to an assessment pursuant to this subsection.~~

~~E. A court shall collect the assessments prescribed in subsection D of this section and remit the assessments to the department of public safety, which shall establish a special subaccount for the monies in the account established for the gang and immigration intelligence team enforcement mission appropriation. Monies in the special subaccount are subject to legislative appropriation for distribution for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration.~~

F. This section does not apply to a person who maintains authorization from the federal government to remain in the United States.

G. Any record that relates to the immigration status of a person is admissible in any court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record.

H. A violation of this section is a class 1 misdemeanor, except that ~~THE MAXIMUM FINE IS ONE HUNDRED DOLLARS AND FOR a FIRST violation of this section is: THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN TWENTY DAYS IN JAIL AND FOR A SECOND OR SUBSEQUENT VIOLATION THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN THIRTY DAYS IN JAIL.~~

~~1. A class 3 felony if the person violates this section while in possession of any of the following:~~

~~(a) A dangerous drug as defined in section 13-3401;~~

~~(b) Precursor chemicals that are used in the manufacturing of methamphetamine in violation of section 13-3404.01;~~

~~(c) A deadly weapon or a dangerous instrument, as defined in section 13-105;~~

~~(d) Property that is used for the purpose of committing an act of terrorism as prescribed in section 13-2308.01;~~

~~2. A class 4 felony if the person either:~~

~~(a) Is convicted of a second or subsequent violation of this section;~~

~~(b) Within sixty months before the violation, has been removed from the United States pursuant to 8 United States Code section 1229a or has accepted a voluntary removal from the United States pursuant to 8 United States Code section 1229e.~~

Sec. 5. Section 13-2928, Arizona Revised Statutes, as added by Senate Bill 1070, section 5, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

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

A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

C. It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.

D. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

E. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

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

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~D. F.~~ A violation of this section is a class 1 misdemeanor.

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

1. "Solicit" means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.

2. "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).

Sec. 6. Section 13-2929, Arizona Revised Statutes, as added by Senate Bill 1070, section 5, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

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

A. It is unlawful for a person who is in violation of a criminal offense to:

1. Transport or move or attempt to transport or move an alien in this state, in furtherance of the illegal presence of the alien in the United States, in a means of transportation if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

2. Conceal, harbor or shield or attempt to conceal, harbor or shield an alien from detection in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

3. Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such coming to, entering or residing in this state is or will be in violation of law.

B. A means of transportation that is used in the commission of a violation of this section is subject to mandatory vehicle immobilization or impoundment pursuant to section 28-3511.

C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

D. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

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

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~E.~~ **E. This section does not apply to a child protective services worker acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an ambulance attendant or an emergency medical technician and who is transporting or moving an alien in this state pursuant to title 36, chapter 21.1.**

~~F.~~ **F. A person who violates this section is guilty of a class 1 misdemeanor and is subject to a fine of at least one thousand dollars, except that a violation of this section that involves ten or more illegal aliens is a class 6 felony and the person is subject to a fine of at least one thousand dollars for each alien who is involved.**

Sec. 7. Joint border security advisory committee; membership; duties; report; delayed repeal

A. The joint border security advisory committee is established consisting of the following members:

1. The president of the senate or the president's designee.

2. The speaker of the house of representatives or the speaker's designee.

3. Two members of the house of representatives who are appointed by the speaker of the house of representatives.

4. Two members of the senate who are appointed by the president of the senate.

5. Six members who are appointed by the governor.

B. Committee members are not eligible to receive compensation for committee activities but may be eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.

C. The president and the speaker of the house of representatives shall each appoint a cochairperson of the committee.

D. The commission shall meet on the call of the two cochairpersons, but no more frequently than monthly.

E. The committee may:

1. Take testimony and other evidence regarding the international border with Mexico.

2. Analyze border crossing statistics.

3. Analyze related crime statistics.

4. Make recommendations designed to increase border security.

5. Make other recommendations deemed essential by the committee.

F. The committee may use the services of legislative staff as required.

G. Beginning November 30, 2010 and each month thereafter, the commission shall submit a written report of its findings and recommendations to the speaker of the house of representatives, the president of the senate and the governor. The commission shall provide a copy of the report to the secretary of state.

H. Notwithstanding any law to the contrary, the committee may vote to go into executive

session to take testimony or evidence it considers sensitive or confidential in nature, which if released could compromise the security or safety of law enforcement or military personnel or a law enforcement or national guard law enforcement support operation.

I. This section is repealed from and after December 31, 2014.

Sec. 8. Immigration legislation challenges

A. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the attorney general shall act at the direction of the governor in any challenge in a state or federal court to Laws 2010, chapter 113 and any amendments to that law.

B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the governor may direct counsel other than the attorney general to appear on behalf of this state to defend any challenge to Laws 2010, chapter 113 and any amendments to that law.

Sec. 9. Conditional enactment

Sections 11-1051, 13-1509, 13-2928 and 13-2929, Arizona Revised Statutes, as amended by this act, do not become effective unless Senate Bill 1070, forty-ninth legislature, second regular session, relating to unlawfully present aliens, becomes law.

EXECUTIVE ORDER

08-01

March 27, 2008

ILLEGAL IMMIGRATION CONTROL ORDER

WHEREAS, most Rhode Islanders and most Americans are descendants of immigrants from all regions of the world and Rhode Island continues to welcome new immigrants who legally seek the opportunities that the state, its economy, and its resources offer; and

WHEREAS, Congress and the President have been unable to resolve the problem of illegal immigration, leaving the states to deal with the consequences of 11 to 20 million illegal immigrants residing in the United States, the number in Rhode Island being between 20,000 and 40,000, more than the population of 32 of Rhode Island's 39 cities and towns; and

WHEREAS, the presence of significant numbers of people illegally residing in the State of Rhode Island creates a burden on the resources of state and local human services, law enforcement agencies, educational institutions and other governmental institutions and diminishes opportunities for citizens and legal immigrants in Rhode Island; and

WHEREAS, in 1996 Congress amended the Immigration and Nationality Act, 8 U.S.C. §1373(c), to allow government entities or officials to send to or receive from the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual and the federal government established the E-Verify program to help employers electronically verify the employment eligibility of new hires and the validity of their Social Security numbers; and

WHEREAS, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA), and authorizes the

Secretary of the U.S. Department of Homeland Security to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions pursuant to a Memorandum of Agreement (MOA), provided that the local law enforcement officers received appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers; and

WHEREAS, law enforcement can more effectively combat criminal activity related to illegal immigration if federal, state and local authorities work on a cooperative basis.

NOW, THEREFORE, I, DONALD L. CARCIERI, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations do hereby order as follows:

1. The Department of Administration shall register and use the federal government's E-Verify program to electronically verify the employment eligibility of new hires in the Executive Branch and the validity of their Social Security numbers to ensure that all employees of the Executive Branch are legally eligible to be employed in the United States and take appropriate action against those that are not eligible for employment, consistent with federal and state law. For purposes of this Order, the Executive Branch of government is considered to be all agencies and departments in the Executive Branch, excluding the offices of general officers, said officers being the Department of Attorney General, Lieutenant Governor, Secretary of State, and General Treasurer.
2. The Department of Administration shall require that all persons and businesses, including grantees, contractors and their subcontractors and vendors doing business with the State of Rhode Island also register with and utilize the services of the E-Verify program to ensure compliance with federal and state law.
3. The Directors of each department and state agency in the Executive Branch shall attempt to notify any person whose identity was stolen or otherwise improperly used by any person in order receive any benefit, including but not limited to child care, health care, any government issued identification card, including driver's license and non-driver's license identification, welfare or employment.
4. The Rhode Island State Police, pursuant to the authority set forth in Section 287(g) of IIRAIRA and INA, shall work to secure a MOA with ICE to receive training necessary to enable them to assist ICE personnel in the enforcement of federal immigration laws.

5. The Department of Corrections shall also work with ICE officials to secure an MOA that will define the scope of state correctional personnel authority to perform certain immigration law enforcement functions which shall be subject to the cross-supervision of ICE and permit certain correctional personnel to complete appropriate training and function under the supervision of sworn ICE officers to combat illegal immigration issues at the Adult Correctional Institution, consistent with federal and state law.
6. It is urged that all law enforcement officials, including state and local law enforcement agencies take steps to support the enforcement of federal immigration laws by investigating and determining the immigration status of all non-citizens taken into custody, incarcerated, or under investigation for any crime and notifying federal authorities of all illegal immigrants discovered as a result of such investigations.
7. The Parole Board and the Department of Corrections shall work cooperatively with ICE personnel to provide for the parole and deportation of criminal aliens.
8. Nothing in this Executive Order shall be construed to supersede, contravene or conflict with any federal or state law or regulation or deny a person's rights under the Rhode Island or United States Constitution and to this extent employees of the Executive Branch may act independently of this Executive Order in order to avoid such conflict or violation.

So Ordered:

Donald L. Carcieri

Dated: _____

Arizona may have lost the first battle over SB 1070, but the larger war has just begun. Arizona Governor Jan Brewer (R-AZ) has already appealed the ruling of U.S. District Court Judge Susan Bolton, who last week issued a temporary order, keeping key provisions of the Arizona immigration law from taking effect. A clear timeline of how the lawsuit will proceed is now beginning to take shape.

Judge Bolton's order was temporary in nature, but the state of Arizona is arguing her order is doing irreparable harm by keeping them from enforcing immigration law. They asked the 9th Circuit Court of Appeals to take up their appeal in an expedited manner. If granted their request, the appeal may have been heard on September 13th, but the 9th Circuit turned down Governor Brewer's request. The case will instead be heard in the first week of November. That means the lawsuit will be in the middle of the news just as Americans go to the polls for the 2010 midterms.

If the appeal in the 9th Circuit fails, Governor Brewer has promised to take the appeal all the way to the Supreme Court. The Governor has set up a fund which has raised over \$1.6 million for the legal process. While disagreeing with Judge Bolton's order, Governor Brewer did concede that the legal battle may have exposed some "faults that can possibly be fixed."

Opponents of SB 1070 are making their own efforts to ensure the full law never gets enforced. Various protests (picture below) have been staged by labor unions, immigrant rights groups, and other concerned citizens. Hundreds of arrests were made in demonstrations of civil disobedience. The Obama administration will defend Judge Bolton's decision in a brief filed with the 9th Circuit on September 26th. The Solicitor General (a post formerly held by Supreme Court nominee Elena Kagan) or a lawyer from the Justice Department will represent the federal government in any oral hearings.

In the meantime, other states are considering legislation similar to that of Arizona. As a result, more lawsuits may emerge, and the Arizona law may very well set an important precedent for every state in the country. If the Supreme Court eventually takes up the case, it would likely be in 2011, unless the Court decides to hear the case under an expedited process.

For more info: Full copy and summary of Judge Bolton's order on SB 1070, An analysis of the constitutionality of the Arizona immigration law.

Arizona Gov. Jan Brewer's office said late Wednesday that the state will file an expedited appeal with the 9th Circuit Court of Appeals on Thursday, asking the panel to lift the preliminary injunction preventing several sections of Arizona's new immigration law from going into effect.

[U.S. District Judge Susan Bolton's ruling](#)

[Montini: War will go on](#) | **[Roberts: History to judge](#)**

[Arpaio 'won't put up with' civil disobedience](#) | **[More](#)**

[A breakdown of the ruling](#) | **[Gov. Brewer: 'Bump in the road'](#)**

[Role of ICE](#) | **[Law preview](#) | **[Immigrants' babies](#)****

Error

The appeal will ask the court to lift the injunctions put in place by U.S. District Court Judge Susan Bolton earlier Wednesday and allow those provisions to go into effect until a decision is made on the merits of the law, Brewer spokesman Paul Senseman said.

As part of its motion, the Governor's Office also will ask the 9th Circuit to expedite its briefing schedule and its ruling on the matter, Senseman said.

Senate Bill 1070 was passed by the Legislature and signed into law by Brewer in April. It made it a state crime to be in the country illegally and stated that an officer engaged in a lawful stop, detention or arrest shall, when practicable, ask about a person's legal status when reasonable suspicion exists that the person is in the U.S. illegally.

It also made it a state crime to stop a vehicle in the road to hire a day laborer if it impedes traffic as well as to transport, harbor, conceal or shield an illegal immigrant while committing a separate criminal offense.

Bolton's ruling stops four of the law's more than a dozen provisions from going into effect.

"The court also finds that the United States is likely to suffer irreparable harm if the court does not preliminarily enjoin enforcement of these sections," she states in the ruling. "The balance of equities tips in the United States' favor considering the public interest."

Key parts of SB 1070 that will not go into effect Thursday:

- The portion of the law that requires an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there's reasonable suspicion they're in the country illegally.
- The portion that creates a crime of failure to apply for or carry "alien-registration papers."

- The portion that allows for a warrantless arrest of a person where there is probable cause to believe they have committed a public offense that makes them removable from the United States.
- The portion that makes it a crime for illegal immigrants to solicit, apply for or perform work. There are three parts to that part of the law. Two of them will go into effect, one of them will not.

Bolton prevented from going into effect the part that creates a crime for an illegal immigrant to solicit, apply or perform work. She allowed the part that makes it a crime to pick up a day laborer in a roadway if it impedes the flow of traffic as well as the part that makes it a crime to be picked up as a day laborer in a roadway if it impedes the flow of traffic.

The ruling also says that law enforcement still must enforce federal immigration laws to the fullest extent of the law when SB 1070 goes into effect at 12:01 a.m. Thursday. Individuals will still be able to sue an agency if they adopt a policy that restricts such enforcement.

Bolton did not halt the part of the law that creates misdemeanors crimes for harboring and transporting illegal immigrants.

After the ruling came down, attorneys rushed to read the 36 pages and begin explaining to law enforcement what could still be enforced.

Brewer, in a phone interview from Tucson, said she was still being briefed on the order, but said, "I look at it as a little bump in the road."

Brewer has not yet spoken with her attorneys in detail, but said she "would assume" that their next step would be appealing the injunction to the 9th Circuit Court of Appeals. "The fact of the matter is this is just an injunction," Brewer said. "We need to go through the court process so the merits of the bill can be debated. I am sure as we go through the process, we'll get a fair hearing."

Bolton's ruling followed hearings on three of seven federal lawsuits challenging SB 1070. Plaintiffs include the U.S. Department of Justice, the American Civil Liberties Union, Phoenix and Tucson police officers, municipalities, illegal immigrants and non-profit groups.

Today's ruling is in the Department of Justice case. Bolton has not yet issued rulings on motions in the case filed by Phoenix Police Officer David Salgado and the case filed by the ACLU and other civil-rights groups.

What the ruling means

Brewer had tasked the Arizona Police Officer Standards and Training board with creating a training video for law enforcement around the state to help them comply with the law.

Lyle Mann, the agency's director, said Bolton's decision raises more questions about what portions of the law, if any, police departments will be enforcing on Thursday.

"We will review in detail the injunction as issued to see what, if any, response we need to provide to agencies," Mann said.

Maricopa County Sheriff Joe Arpaio said he was not surprised by Bolton's ruling, but it will have little impact on his planned "crime-suppression" operation scheduled for Thursday.

"That's not going to affect our human-smuggling or employer-sanction investigations, that wasn't addressed in that law," he said.

Arpaio said the only thing Bolton's ruling changed is the ability for Arizona law enforcement to use a state charge - willful failure to carry documents - to book someone into jail. Now, Arpaio said, the agencies can continue to contact Immigration and Customs Enforcement officials to determine if federal agents will take custody of the suspect.

Everyone booked into Maricopa County Jail will continue to have their immigration status screened by federally trained sheriff's deputies through an agreement with ICE.

Phoenix police legal advisors were busy combing through Bolton's ruling to determine the impact. The challenge, said Sgt. Tommy Thompson, will be determining what, exactly, that ruling means before 12:01 a.m.

Brewer gave AzPOST a month to develop the statewide training for law enforcement, and police across the state had a month to implement the training, which included a two-hour video and additional materials police departments used to supplement.

Legal advisors now have 14 hours to determine what Bolton's ruling does to the last two months of preparation.

"We have to give our legal people time to review it," Thompson said, adding that it is not unrealistic to expect officers to have some directive by Thursday morning.

"We are bound to enforce the law and that means that we enforce it correctly," Thompson said. "It's certainly a challenge for us to meet that deadline, but it's something that we will do our best to be ready to follow the guidelines laid out by the judge at this point."

The Pinal County Sheriff's Office also is waiting for a review.

"We have no reaction because we're going to do business today, tomorrow the same as we did yesterday ... If we come into contact with a load of what is obviously someone being smuggled, we'll do what we do today: We'll call ICE or Border Patrol or a deputy who is ICE certified," said Chief Deputy Steve Henry said.

Henry said he is waiting on an overview from the Pinal County Attorney's Office as to what happened in court today and what it means with regard to SB 1070 implementation.

"In the meantime, we're not even holding our breath," Henry said. "We're just doing business. We're not in the business of racially profiling or arresting people on their skin color. This is essentially a non event."

However, Sheriff Paul Babeu was more vocal in his opposition to the ruling: "Incredibly, even though there is not one person who can legitimately claim to be harmed by a law that has not even taken effect, the result of an injunction is de facto amnesty through non-enforcement of laws against illegal immigration."

The governor deferred answering specific questions about the impact of the ruling to her attorneys. For example, Bolton let the part of SB 1070 that requires agencies to enforce federal immigration law to the fullest extent of the law to stand, but enjoined the part about allowing officers to question an individual's legal status.

When asked how it would be possible to do one without the other, Brewer said her office would need to "confer with our lawyers to see how that would be enforced."

"Those are legal questions that do have to be addressed," said Brewer, who plans to be back in Phoenix by 3 p.m., and hopes to meet with her attorneys at some point this afternoon.

The Arizona Supreme Court had prepared an administrative order as to how the courts would handle SB1070 cases that was supposed to be issued Wednesday morning. Bolton's ruling sent the high court scrambling to revise the order in light of the enjoined portions of the law.

Originally it called for a review hearing after 24 hours for those people who were being held in custody only because their immigration status had not yet been verified. That issue became moot when the federal court order tabled that section of the law.

Instead, the Supreme Court ruled that the federal Immigration and Customs Enforcement agency be notified when defendants are found to be unlawfully present in the United States. And it codified a part of the law in which law enforcement officers apply to a judge to remove a suspect from the state, and rewrote the documents that law enforcement fills out for a defendant's initial court appearance.

Stakeholders react

Brewer said Bolton's order was not entirely a surprise, given some of the questions that the judge asked during last week's court proceedings.

Sen. Russell Pearce, a Mesa Republican and author of Senate Bill 1070, downplayed the significance of the judge's order Wednesday, noting that it was just a temporary injunction and that she allowed the portion of the bill that requires agencies to enforce federal immigration law to the fullest extent to remain in place.

"As of Thursday, the handcuffs come off of law enforcement," Pearce said. "This says clearly that we can enforce federal law and we cannot be impeded." Pearce believes the case will ultimately make its way to the Supreme Court, and he predicted a win for Arizona.

"We will appeal this immediately and we will win on appeal," he said. "This will be to the Supreme Court eventually, and I expect a 5-4 decision in our favor, perhaps even 6-3."

Rep. John Kavanagh, one of the co-sponsors of the bill, had a less optimistic view of the ruling, calling Bolton's ruling "very disappointing," saying that she "went to the meat of the law." "The decision is very disappointing," Kavanagh said. "Those were major parts of the law that helped us battle illegal immigration. I assume that we will immediately appeal to the 9th Circuit (Court of Appeals)."

Kavanagh said that the state remained committed to defending the law and seeing it enacted. "This is only the start of the legal battle."

Brian Bergin, the attorney representing Cochise County Sheriff Larry Dever as a defendant in one of the lawsuits, said he appreciated the fact that Bolton didn't prevent SB 1070 in its entirety from becoming law.

"But the court did enter an injunction prohibiting the enforcement of what we consider to be some of the act's more important provisions," he said.

Bolton has not yet issued an order in Dever's case, but Bergin said he expects it to be similar to the one she has issued. He said he still has to talk to Dever but he expects they would appeal.

Meanwhile, Hannah August, a Justice Department spokeswoman, said the administration believes Bolton's decision to block key parts of SB 1070 was correct.

"While we understand the frustration of Arizonans with the broken immigration system, a patchwork of state and local policies would seriously disrupt federal immigration enforcement and would ultimately be counterproductive," August said.

Matt Chandler, deputy press secretary with the Department of Homeland Security said Bolton's decision "affirms the federal government's responsibilities in enforcing our nation's immigration laws."

"Over the past 18 months, this administration has dedicated unprecedented resources to secure the border, and we will continue to work to take decisive action to disrupt criminal organizations and the networks they exploit."

ACLU of Arizona Executive Director Alessandra Soler Meetze said she's pleased with the judge's decision.

"We think this is a major step that will protect the residents of Arizona against racial profiling and discrimination," she said. "But we still have some concerns about the remaining provisions, especially how the harboring provisions and the day laborer provisions may be misapplied by overzealous law enforcement."

Shortly after the ruling, Attorney General Terry Goddard, who is the presumptive Democratic nominee for governor and Brewer's anticipated general election opponent, accused her of using SB 1070 for political gain, tweeting "Brewer played politics with immigration - and she lost."

Stephen Montoya, the attorney representing Phoenix police Officer David Salgado in the lawsuit he filed challenging SB 1070, said he was gratified by Bolton's ruling.

"We think she struck the heart out of 1070," Montoya said. "We're gratified but we're not surprised."

He said he expects the state to immediately file an appeal, and they will fight that. Montoya said he hopes that Bolton's ruling will bring a halt to the inflammatory rhetoric on all sides.

"I think the people who lost shouldn't feel like they completely lost because they do have an avenue of redress and that is the United States Congress," he said. "This debate is for the federal Congress, not for the state Legislature."

Rafael Limón, head of the Sonora state government's migrant affairs office in Nogales, said "It will give us a little rest, but it's not time to celebrate yet."

Limón's office has been bracing for a wave of new deportees because of the law, he said. The Sonoran government runs a clinic for deportees, gives them free telephone calls and pays half the cost of a bus ticket for out-of-state migrants who want to return home.

Sonoran officials are worried that a wave of deportees caused by SB1070 could lead to more crime in the state, Limón said.

"That's one of the fears, that we could see more social problems," Limón said. "With no money, some of those deportees may turn to crime."

Planned protests

David Gonzales, U.S. Marshal in Arizona, whose agency is charged with security at the federal courthouse in downtown Phoenix, said the building was closed to the public except for those who have business there.

Gonzales said there was some concern about protesters in the wake of Bolton's ruling. "When you have situations like this, emotions are running high on both ends," Gonzales said. "So the potential for violence is high."

A spokeswoman for Puente, one of the groups that have been organizing against the law, said the group doesn't view the partial injunction as a victory and believes the entire law should have been stopped.

"There is still a lot to be dealt with," said Opal Tometi, a spokeswoman for the group. "This decision doesn't get at the root of the issue or get at the concerns of the people affected."

Tometi said the group is planning on going ahead with Thursday's scheduled protest.

Community activist Salvador Reza said at an afternoon news conference that the community would not rest because of the injunction. "We will continue our struggle, we will continue our vigilance and we will continue our civil disobedience."

Those words were echoed by Pablo Alvarado, of the National Day Laborer Organizing Network, said "SB 1070 is on life support, but it's still alive."

Republic reporters Dan Nowicki, Erin Kelly, Kevin Kiley, Michael Kiefer, Lindsey Collom, Chris Hawley and Casey Newton contributed to this report.

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