

On April 23, 2010, Governor Jan Brewer Signed Senate Bill 1070 into law. SB1070 was enacted as Laws 2010, Chapter 113. House Bill 2162 made additional changes to Laws 2010, Chapter 113. Below is an engrossed version of SB1070 with the pertinent changes made by the Conference Engrossed HB2162. **BLUE** text indicates the original language of SB1070 and **GREEN** text denotes changes made by HB2162.

House Engrossed Senate Bill

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 13-3883, 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
8 to work together to discourage and deter the unlawful entry and presence
9 of aliens and economic activity by persons unlawfully present in the
10 United States.

11 Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended
12 by 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 LIMIT OR RESTRICT THE
18 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT
19 PERMITTED BY FEDERAL LAW.

20 B. FOR ANY LAWFUL ~~CONTACT STOP, DETENTION OR ARREST~~ MADE BY A LAW
21 ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT AGENCY OF THIS STATE OR A LAW
22 ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT AGENCY OF A COUNTY, CITY, TOWN
23 OR OTHER POLITICAL SUBDIVISION OF THIS STATE IN THE ENFORCEMENT OF ANY
24 OTHER LAW OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE WHERE
25 REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN ~~WHO~~ AND IS
26 UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE
27 MADE, WHEN PRACTICABLE, TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON,
28 EXCEPT IF THE DETERMINATION MAY HINDER OR OBSTRUCT AN INVESTIGATION. ANY
29 PERSON WHO IS ARRESTED SHALL HAVE THE PERSON'S IMMIGRATION STATUS
30 DETERMINED BEFORE THE PERSON IS RELEASED. THE PERSON'S IMMIGRATION STATUS
31 SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES
32 CODE SECTION 1373(c). A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE
33 OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY
34 NOT ~~SOLELY~~ CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN IMPLEMENTING THE
35 REQUIREMENTS OF THIS SUBSECTION EXCEPT TO THE EXTENT PERMITTED BY THE
36 UNITED STATES OR ARIZONA CONSTITUTION. A PERSON IS PRESUMED TO NOT BE AN
37 ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IF THE PERSON
38 PROVIDES TO THE LAW ENFORCEMENT OFFICER OR AGENCY ANY OF THE FOLLOWING:

- 39 1. A VALID ARIZONA DRIVER LICENSE.
- 40 2. A VALID ARIZONA NONOPERATING IDENTIFICATION LICENSE.
- 41 3. A VALID TRIBAL ENROLLMENT CARD OR OTHER FORM OF TRIBAL
42 IDENTIFICATION.

43 4. IF THE ENTITY REQUIRES PROOF OF LEGAL PRESENCE IN THE UNITED
44 STATES BEFORE ISSUANCE, ANY VALID UNITED STATES FEDERAL, STATE OR LOCAL
45 GOVERNMENT ISSUED IDENTIFICATION.

1 C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS
2 CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM
3 IMPRISONMENT OR ON THE ASSESSMENT OF ANY MONETARY OBLIGATION THAT IS
4 IMPOSED, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE
5 UNITED STATES CUSTOMS AND BORDER PROTECTION SHALL BE IMMEDIATELY NOTIFIED.

6 D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY
7 SECURELY TRANSPORT AN ALIEN WHO THE AGENCY HAS RECEIVED VERIFICATION IS
8 UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS IN THE AGENCY'S CUSTODY
9 TO A FEDERAL FACILITY IN THIS STATE OR TO ANY OTHER POINT OF TRANSFER INTO
10 FEDERAL CUSTODY THAT IS OUTSIDE THE JURISDICTION OF THE LAW ENFORCEMENT
11 AGENCY. A LAW ENFORCEMENT AGENCY SHALL OBTAIN JUDICIAL AUTHORIZATION
12 BEFORE SECURELY TRANSPORTING AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE
13 UNITED STATES TO A POINT OF TRANSFER THAT IS OUTSIDE OF THIS STATE.

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

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

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

21 ~~E.~~ F. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF
22 THIS STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF
23 THIS STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING,
24 RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS,
25 LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH
26 ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING
27 OFFICIAL PURPOSES:

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

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

35 3. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
36 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II,
37 CHAPTER 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

38 4. PURSUANT TO 8 UNITED STATES CODE SECTION 1373 AND 8 UNITED
39 STATES CODE SECTION 1644.

40 ~~F.~~ G. THIS SECTION DOES NOT IMPLEMENT, AUTHORIZE OR ESTABLISH AND
41 SHALL NOT BE CONSTRUED TO IMPLEMENT, AUTHORIZE OR ESTABLISH THE REAL ID
42 ACT OF 2005 (P.L. 109-13, DIVISION B; 119 STAT. 302), INCLUDING THE USE OF
43 A RADIO FREQUENCY IDENTIFICATION CHIP.

44 ~~G.~~ H. A PERSON WHO IS A LEGAL RESIDENT OF THIS STATE MAY BRING AN
45 ACTION IN SUPERIOR COURT TO CHALLENGE ANY OFFICIAL OR AGENCY OF THIS STATE

1 OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT
2 ADOPTS OR IMPLEMENTS A POLICY ~~OR PRACTICE~~ THAT LIMITS OR RESTRICTS THE
3 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS, INCLUDING 8 UNITED STATES CODE
4 SECTIONS 1373 AND 1644, TO LESS THAN THE FULL EXTENT PERMITTED BY FEDERAL
5 LAW. IF THERE IS A JUDICIAL FINDING THAT AN ENTITY HAS VIOLATED THIS
6 SECTION, THE COURT SHALL ORDER THAT THE ENTITY PAY A CIVIL PENALTY OF NOT
7 LESS THAN ~~ONE THOUSAND~~ FIVE HUNDRED DOLLARS AND NOT MORE THAN FIVE
8 THOUSAND DOLLARS FOR EACH DAY THAT THE POLICY HAS REMAINED IN EFFECT AFTER
9 THE FILING OF AN ACTION PURSUANT TO THIS SUBSECTION.

10 ~~H.~~ I. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN
11 SUBSECTION ~~G~~ H OF THIS SECTION AND REMIT THE CIVIL PENALTY TO THE STATE
12 TREASURER FOR DEPOSIT IN THE GANG AND IMMIGRATION INTELLIGENCE TEAM
13 ENFORCEMENT MISSION FUND ESTABLISHED BY SECTION 41-1724.

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

19 ~~J.~~ K. EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS
20 ADJUDGED TO HAVE ACTED IN BAD FAITH, A LAW ENFORCEMENT OFFICER IS
21 INDEMNIFIED BY THE LAW ENFORCEMENT OFFICER'S AGENCY AGAINST REASONABLE
22 COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY THE OFFICER IN
23 CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING BROUGHT PURSUANT TO THIS
24 SECTION IN WHICH THE OFFICER MAY BE A DEFENDANT BY REASON OF THE OFFICER
25 BEING OR HAVING BEEN A MEMBER OF THE LAW ENFORCEMENT AGENCY.

26 ~~K.~~ L. THIS SECTION SHALL BE IMPLEMENTED IN A MANNER CONSISTENT
27 WITH FEDERAL LAWS REGULATING IMMIGRATION, PROTECTING THE CIVIL RIGHTS OF
28 ALL PERSONS AND RESPECTING THE PRIVILEGES AND IMMUNITIES OF UNITED STATES
29 CITIZENS.

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

32 13-1509. Willful failure to complete or carry an alien
33 registration document; assessment; exception;
34 authenticated records; classification

35 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY
36 OF WILLFUL FAILURE TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT IF
37 THE PERSON IS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR
38 1306(a).

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

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

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

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

5 ~~C.~~ D. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT
6 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON, COMMUTATION OF
7 SENTENCE, OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY
8 SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT
9 HAS BEEN SERVED OR THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
10 41-1604.07.

11 ~~D.~~ E. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE
12 COURT SHALL ORDER THE PERSON TO PAY JAIL COSTS. ~~AND AN ADDITIONAL~~
13 ~~ASSESSMENT IN THE 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~~
16 ~~THE PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS~~
17 ~~SUBSECTION.~~

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

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

28 G. ANY RECORD THAT RELATES TO THE IMMIGRATION STATUS OF A PERSON IS
29 ADMISSIBLE IN ANY COURT WITHOUT FURTHER FOUNDATION OR TESTIMONY FROM A
30 CUSTODIAN OF RECORDS IF THE RECORD IS CERTIFIED AS AUTHENTIC BY THE
31 GOVERNMENT AGENCY THAT IS RESPONSIBLE FOR MAINTAINING THE RECORD.

32 H. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT
33 THAT THE MAXIMUM FINE IS ONE HUNDRED DOLLARS AND FOR A FIRST VIOLATION OF
34 THIS SECTION ~~IS:~~ THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN
35 TWENTY DAYS IN JAIL AND FOR A SECOND OR SUBSEQUENT VIOLATION THE COURT
36 SHALL NOT SENTENCE THE PERSON TO MORE THAN THIRTY DAYS IN JAIL.

37 ~~1. A CLASS 3 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN~~
38 ~~POSSESSION OF ANY OF THE FOLLOWING:~~

- 39 ~~(a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.~~
40 ~~(b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF~~
41 ~~METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.~~
42 ~~(c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN~~
43 ~~SECTION 13-105.~~
44 ~~(d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF~~
45 ~~TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.~~

1 ~~2. A CLASS 4 FELONY IF THE PERSON EITHER:~~
2 ~~(a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS~~
3 ~~SECTION.~~
4 ~~(b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM~~
5 ~~THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS~~
6 ~~ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED~~
7 ~~STATES CODE SECTION 1229c.~~

8 Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to
9 read:

10 13-2319. Smuggling; classification; definitions

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

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

14 C. Notwithstanding subsection B of this section, a violation of
15 this section:

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

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

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

28 E. **NOTWITHSTANDING ANY OTHER LAW, IN THE ENFORCEMENT OF THIS**
29 **SECTION A PEACE OFFICER MAY LAWFULLY STOP ANY PERSON WHO IS OPERATING A**
30 **MOTOR VEHICLE IF THE OFFICER HAS REASONABLE SUSPICION TO BELIEVE THE**
31 **PERSON IS IN VIOLATION OF ANY CIVIL TRAFFIC LAW.**

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

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

36 2. "Procurement of transportation" means any participation in or
37 facilitation of transportation and includes:

38 (a) Providing services that facilitate transportation including
39 travel arrangement services or money transmission services.

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

44 3. "Smuggling of human beings" means the transportation,
45 procurement of transportation or use of property or real property by a

1 person or an entity that knows or has reason to know that the person or
2 persons transported or to be transported are not United States citizens,
3 permanent resident aliens or persons otherwise lawfully in this state or
4 have attempted to enter, entered or remained in the United States in
5 violation of law.

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

8 13-2928. Unlawful stopping to hire and pick up passengers for
9 work; unlawful application, solicitation or
10 employment; classification; definitions

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

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

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

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

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

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

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

35 ~~D.~~ F. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

36 ~~E.~~ G. FOR THE PURPOSES OF THIS SECTION:

37 1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE
38 OR A NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS
39 WILLING TO BE EMPLOYED.

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

43 13-2929. Unlawful transporting, moving, concealing, harboring
44 or shielding of unlawful aliens; vehicle
45 impoundment; exception; classification

1 A. IT IS UNLAWFUL FOR A PERSON WHO IS IN VIOLATION OF A CRIMINAL
2 OFFENSE TO:

3 1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN
4 THIS STATE, IN FURTHERANCE OF THE ILLEGAL PRESENCE OF THE ALIEN IN THE
5 UNITED STATES, IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR
6 RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR
7 REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

8 2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR
9 SHIELD AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY
10 BUILDING OR ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY
11 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN
12 THE UNITED STATES IN VIOLATION OF LAW.

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

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

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

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

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

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

30 ~~E.~~ E. THIS SECTION DOES NOT APPLY TO A CHILD PROTECTIVE SERVICES
31 WORKER ACTING IN THE WORKER'S OFFICIAL CAPACITY OR A PERSON WHO IS ACTING
32 IN THE CAPACITY OF A FIRST RESPONDER, AN AMBULANCE ATTENDANT OR AN
33 EMERGENCY MEDICAL TECHNICIAN AND WHO IS TRANSPORTING OR MOVING AN ALIEN IN
34 THIS STATE PURSUANT TO TITLE 36, CHAPTER 21.1.

35 ~~D.~~ F. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
36 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS,
37 EXCEPT THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL
38 ALIENS IS A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST
39 ONE THOUSAND DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

40 Sec. 6. Section 13-3883, Arizona Revised Statutes, is amended to
41 read:

42 13-3883. Arrest by officer without warrant

43 A. A peace officer ~~may~~, without a warrant, MAY arrest a person if
44 ~~he~~ THE OFFICER has probable cause to believe:

1 1. A felony has been committed and probable cause to believe the
2 person to be arrested has committed the felony.

3 2. A misdemeanor has been committed in ~~his~~ THE OFFICER'S presence
4 and probable cause to believe the person to be arrested has committed the
5 offense.

6 3. The person to be arrested has been involved in a traffic
7 accident and violated any criminal section of title 28, and that such
8 violation occurred prior to or immediately following such traffic
9 accident.

10 4. A misdemeanor or a petty offense has been committed and probable
11 cause to believe the person to be arrested has committed the offense. A
12 person arrested under this paragraph is eligible for release under section
13 13-3903.

14 5. THE PERSON TO BE ARRESTED HAS COMMITTED ANY PUBLIC OFFENSE THAT
15 MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

16 B. A peace officer may stop and detain a person as is reasonably
17 necessary to investigate an actual or suspected violation of any traffic
18 law committed in the officer's presence and may serve a copy of the
19 traffic complaint for any alleged civil or criminal traffic violation. A
20 peace officer who serves a copy of the traffic complaint shall do so
21 within a reasonable time of the alleged criminal or civil traffic
22 violation.

23 Sec. 7. Section 23-212, Arizona Revised Statutes, is amended to
24 read:

25 23-212. Knowingly employing unauthorized aliens; prohibition;
26 false and frivolous complaints; violation;
27 classification; license suspension and revocation;
28 affirmative defense

29 A. An employer shall not knowingly employ an unauthorized alien.
30 If, in the case when an employer uses a contract, subcontract or other
31 independent contractor agreement to obtain the labor of an alien in this
32 state, the employer knowingly contracts with an unauthorized alien or with
33 a person who employs or contracts with an unauthorized alien to perform
34 the labor, the employer violates this subsection.

35 B. The attorney general shall prescribe a complaint form for a
36 person to allege a violation of subsection A of this section. The
37 complainant shall not be required to list the complainant's social
38 security number on the complaint form or to have the complaint form
39 notarized. On receipt of a complaint on a prescribed complaint form that
40 an employer allegedly knowingly employs an unauthorized alien, the
41 attorney general or county attorney shall investigate whether the employer
42 has violated subsection A of this section. If a complaint is received but
43 is not submitted on a prescribed complaint form, the attorney general or
44 county attorney may investigate whether the employer has violated
45 subsection A of this section. This subsection shall not be construed to

1 prohibit the filing of anonymous complaints that are not submitted on a
2 prescribed complaint form. The attorney general or county attorney shall
3 not investigate complaints that are based solely on race, color or
4 national origin. A complaint that is submitted to a county attorney shall
5 be submitted to the county attorney in the county in which the alleged
6 unauthorized alien is or was employed by the employer. The county sheriff
7 or any other local law enforcement agency may assist in investigating a
8 complaint. When investigating a complaint, the attorney general or county
9 attorney shall verify the work authorization of the alleged unauthorized
10 alien with the federal government pursuant to 8 United States Code section
11 1373(c). A state, county or local official shall not attempt to
12 independently make a final determination on whether an alien is authorized
13 to work in the United States. An alien's immigration status or work
14 authorization status shall be verified with the federal government
15 pursuant to 8 United States Code section 1373(c). A person who knowingly
16 files a false and frivolous complaint under this subsection is guilty of a
17 class 3 misdemeanor.

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

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

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

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

27 D. An action for a violation of subsection A of this section shall
28 be brought against the employer by the county attorney in the county where
29 the unauthorized alien employee is or was employed by the employer. The
30 county attorney shall not bring an action against any employer for any
31 violation of subsection A of this section that occurs before January 1,
32 2008. A second violation of this section shall be based only on an
33 unauthorized alien who is or was employed by the employer after an action
34 has been brought for a violation of subsection A of this section or
35 section 23-212.01, subsection A.

36 E. For any action in superior court under this section, the court
37 shall expedite the action, including assigning the hearing at the earliest
38 practicable date.

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

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

42 (a) Shall order the employer to terminate the employment of all
43 unauthorized aliens.

44 (b) Shall order the employer to be subject to a three year
45 probationary period for the business location where the unauthorized alien

1 performed work. During the probationary period the employer shall file
2 quarterly reports in the form provided in section 23-722.01 with the
3 county attorney of each new employee who is hired by the employer at the
4 business location where the unauthorized alien performed work.

5 (c) Shall order the employer to file a signed sworn affidavit with
6 the county attorney within three business days after the order is
7 issued. The affidavit shall state that the employer has terminated the
8 employment of all unauthorized aliens in this state and that the employer
9 will not intentionally or knowingly employ an unauthorized alien in this
10 state. The court shall order the appropriate agencies to suspend all
11 licenses subject to this subdivision that are held by the employer if the
12 employer fails to file a signed sworn affidavit with the county attorney
13 within three business days after the order is issued. All licenses that
14 are suspended under this subdivision shall remain suspended until the
15 employer files a signed sworn affidavit with the county attorney.
16 Notwithstanding any other law, on filing of the affidavit the suspended
17 licenses shall be reinstated immediately by the appropriate agencies. For
18 the purposes of this subdivision, the licenses that are subject to
19 suspension under this subdivision are all licenses that are held by the
20 employer specific to the business location where the unauthorized alien
21 performed work. If the employer does not hold a license specific to the
22 business location where the unauthorized alien performed work, but a
23 license is necessary to operate the employer's business in general, the
24 licenses that are subject to suspension under this subdivision are all
25 licenses that are held by the employer at the employer's primary place of
26 business. On receipt of the court's order and notwithstanding any other
27 law, the appropriate agencies shall suspend the licenses according to the
28 court's order. The court shall send a copy of the court's order to the
29 attorney general and the attorney general shall maintain the copy pursuant
30 to subsection G of this section.

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

- 37 (i) The number of unauthorized aliens employed by the employer.
38 (ii) Any prior misconduct by the employer.
39 (iii) The degree of harm resulting from the violation.
40 (iv) Whether the employer made good faith efforts to comply with
41 any applicable requirements.
42 (v) The duration of the violation.
43 (vi) The role of the directors, officers or principals of the
44 employer in the violation.
45 (vii) Any other factors the court deems appropriate.

1 2. For a second violation, as described in paragraph 3 of this
2 subsection, the court shall order the appropriate agencies to permanently
3 revoke all licenses that are held by the employer specific to the business
4 location where the unauthorized alien performed work. If the employer
5 does not hold a license specific to the business location where the
6 unauthorized alien performed work, but a license is necessary to operate
7 the employer's business in general, the court shall order the appropriate
8 agencies to permanently revoke all licenses that are held by the employer
9 at the employer's primary place of business. On receipt of the order and
10 notwithstanding any other law, the appropriate agencies shall immediately
11 revoke the licenses.

12 3. The violation shall be considered:

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

17 (b) A second violation by an employer at a business location if the
18 violation occurred during a probationary period ordered by the court under
19 this subsection or section 23-212.01, subsection F for that employer's
20 business location.

21 G. The attorney general shall maintain copies of court orders that
22 are received pursuant to subsection F of this section and shall maintain a
23 database of the employers and business locations that have a first
24 violation of subsection A of this section and make the court orders
25 available on the attorney general's website.

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

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

38 J. For the purposes of this section, an employer that establishes
39 that it has complied in good faith with the requirements of 8 United
40 States Code section 1324a(b) establishes an affirmative defense that the
41 employer did not knowingly employ an unauthorized alien. An employer is
42 considered to have complied with the requirements of 8 United States Code
43 section 1324a(b), notwithstanding an isolated, sporadic or accidental
44 technical or procedural failure to meet the requirements, if there is a
45 good faith attempt to comply with the requirements.

1 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF
2 THIS SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE
3 EMPLOYER MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE
4 SUBSTANTIAL ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN
5 ENTRAPMENT DEFENSE HAS THE BURDEN OF PROVING THE FOLLOWING BY A
6 PREPONDERANCE OF THE EVIDENCE:

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

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

11 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE
12 THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
13 EMPLOYER TO COMMIT THE VIOLATION.

14 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
15 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW
16 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN
17 OPPORTUNITY TO COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW
18 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL
19 THEIR IDENTITY. THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS
20 MAY BE CONSIDERED IN DETERMINING IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

21 Sec. 8. Section 23-212.01, Arizona Revised Statutes, is amended to
22 read:

23 23-212.01. Intentionally employing unauthorized aliens;
24 prohibition; false and frivolous complaints;
25 violation; classification; license suspension
26 and revocation; affirmative defense

27 A. An employer shall not intentionally employ an unauthorized
28 alien. If, in the case when an employer uses a contract, subcontract or
29 other independent contractor agreement to obtain the labor of an alien in
30 this state, the employer intentionally contracts with an unauthorized
31 alien or with a person who employs or contracts with an unauthorized alien
32 to perform the labor, the employer violates this subsection.

33 B. The attorney general shall prescribe a complaint form for a
34 person to allege a violation of subsection A of this section. The
35 complainant shall not be required to list the complainant's social
36 security number on the complaint form or to have the complaint form
37 notarized. On receipt of a complaint on a prescribed complaint form that
38 an employer allegedly intentionally employs an unauthorized alien, the
39 attorney general or county attorney shall investigate whether the employer
40 has violated subsection A of this section. If a complaint is received but
41 is not submitted on a prescribed complaint form, the attorney general or
42 county attorney may investigate whether the employer has violated
43 subsection A of this section. This subsection shall not be construed to
44 prohibit the filing of anonymous complaints that are not submitted on a
45 prescribed complaint form. The attorney general or county attorney shall

1 not investigate complaints that are based solely on race, color or
2 national origin. A complaint that is submitted to a county attorney shall
3 be submitted to the county attorney in the county in which the alleged
4 unauthorized alien is or was employed by the employer. The county sheriff
5 or any other local law enforcement agency may assist in investigating a
6 complaint. When investigating a complaint, the attorney general or county
7 attorney shall verify the work authorization of the alleged unauthorized
8 alien with the federal government pursuant to 8 United States Code section
9 1373(c). A state, county or local official shall not attempt to
10 independently make a final determination on whether an alien is authorized
11 to work in the United States. An alien's immigration status or work
12 authorization status shall be verified with the federal government
13 pursuant to 8 United States Code section 1373(c). A person who knowingly
14 files a false and frivolous complaint under this subsection is guilty of a
15 class 3 misdemeanor.

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

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

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

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

25 D. An action for a violation of subsection A of this section shall
26 be brought against the employer by the county attorney in the county where
27 the unauthorized alien employee is or was employed by the employer. The
28 county attorney shall not bring an action against any employer for any
29 violation of subsection A of this section that occurs before January 1,
30 2008. A second violation of this section shall be based only on an
31 unauthorized alien who is or was employed by the employer after an action
32 has been brought for a violation of subsection A of this section or
33 section 23-212, subsection A.

34 E. For any action in superior court under this section, the court
35 shall expedite the action, including assigning the hearing at the earliest
36 practicable date.

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

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

40 (a) Order the employer to terminate the employment of all
41 unauthorized aliens.

42 (b) Order the employer to be subject to a five year probationary
43 period for the business location where the unauthorized alien performed
44 work. During the probationary period the employer shall file quarterly
45 reports in the form provided in section 23-722.01 with the county attorney

1 of each new employee who is hired by the employer at the business location
2 where the unauthorized alien performed work.

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

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

10 (ii) Any prior misconduct by the employer.

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

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

14 (v) The duration of the violation.

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

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

18 (d) Order the employer to file a signed sworn affidavit with the
19 county attorney. The affidavit shall state that the employer has
20 terminated the employment of all unauthorized aliens in this state and
21 that the employer will not intentionally or knowingly employ an
22 unauthorized alien in this state. The court shall order the appropriate
23 agencies to suspend all licenses subject to this subdivision that are held
24 by the employer if the employer fails to file a signed sworn affidavit
25 with the county attorney within three business days after the order is
26 issued. All licenses that are suspended under this subdivision for
27 failing to file a signed sworn affidavit shall remain suspended until the
28 employer files a signed sworn affidavit with the county attorney. For the
29 purposes of this subdivision, the licenses that are subject to suspension
30 under this subdivision are all licenses that are held by the employer
31 specific to the business location where the unauthorized alien performed
32 work. If the employer does not hold a license specific to the business
33 location where the unauthorized alien performed work, but a license is
34 necessary to operate the employer's business in general, the licenses that
35 are subject to suspension under this subdivision are all licenses that are
36 held by the employer at the employer's primary place of business. On
37 receipt of the court's order and notwithstanding any other law, the
38 appropriate agencies shall suspend the licenses according to the court's
39 order. The court shall send a copy of the court's order to the attorney
40 general and the attorney general shall maintain the copy pursuant to
41 subsection G of this section.

42 2. For a second violation, as described in paragraph 3 of this
43 subsection, the court shall order the appropriate agencies to permanently
44 revoke all licenses that are held by the employer specific to the business
45 location where the unauthorized alien performed work. If the employer

1 does not hold a license specific to the business location where the
2 unauthorized alien performed work, but a license is necessary to operate
3 the employer's business in general, the court shall order the appropriate
4 agencies to permanently revoke all licenses that are held by the employer
5 at the employer's primary place of business. On receipt of the order and
6 notwithstanding any other law, the appropriate agencies shall immediately
7 revoke the licenses.

8 3. The violation shall be considered:

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

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

17 G. The attorney general shall maintain copies of court orders that
18 are received pursuant to subsection F of this section and shall maintain a
19 database of the employers and business locations that have a first
20 violation of subsection A of this section and make the court orders
21 available on the attorney general's website.

22 H. On determining whether an employee is an unauthorized alien, the
23 court shall consider only the federal government's determination pursuant
24 to 8 United States Code section 1373(c). The federal government's
25 determination creates a rebuttable presumption of the employee's lawful
26 status. The court may take judicial notice of the federal government's
27 determination and may request the federal government to provide automated
28 or testimonial verification pursuant to 8 United States Code section
29 1373(c).

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

34 J. For the purposes of this section, an employer that establishes
35 that it has complied in good faith with the requirements of 8 United
36 States Code section 1324a(b) establishes an affirmative defense that the
37 employer did not intentionally employ an unauthorized alien. An employer
38 is considered to have complied with the requirements of 8 United States
39 Code section 1324a(b), notwithstanding an isolated, sporadic or accidental
40 technical or procedural failure to meet the requirements, if there is a
41 good faith attempt to comply with the requirements.

42 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF
43 THIS SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE
44 EMPLOYER MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE
45 SUBSTANTIAL ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN

1 ENTRAPMENT DEFENSE HAS THE BURDEN OF PROVING THE FOLLOWING BY A
2 PREPONDERANCE OF THE EVIDENCE:

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

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

7 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE
8 THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
9 EMPLOYER TO COMMIT THE VIOLATION.

10 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
11 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW
12 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN
13 OPPORTUNITY TO COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW
14 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL
15 THEIR IDENTITY. THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS
16 MAY BE CONSIDERED IN DETERMINING IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

17 Sec. 9. Section 23-214, Arizona Revised Statutes, is amended to
18 read:

19 23-214. Verification of employment eligibility; e-verify
20 program; economic development incentives; list of
21 registered employers

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

27 B. In addition to any other requirement for an employer to receive
28 an economic development incentive from a government entity, the employer
29 shall register with and participate in the e-verify program. Before
30 receiving the economic development incentive, the employer shall provide
31 proof to the government entity that the employer is registered with and is
32 participating in the e-verify program. If the government entity
33 determines that the employer is not complying with this subsection, the
34 government entity shall notify the employer by certified mail of the
35 government entity's determination of noncompliance and the employer's
36 right to appeal the determination. On a final determination of
37 noncompliance, the employer shall repay all monies received as an economic
38 development incentive to the government entity within thirty days of the
39 final determination. For the purposes of this subsection:

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

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

1 C. Every three months the attorney general shall request from the
2 United States department of homeland security a list of employers from
3 this state that are registered with the e-verify program. On receipt of
4 the list of employers, the attorney general shall make the list available
5 on the attorney general's website.

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

8 28-3511. Removal and immobilization or impoundment of vehicle

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

12 1. The person's driving privilege is suspended or revoked for any
13 reason.

14 2. The person has not ever been issued a valid driver license or
15 permit by this state and the person does not produce evidence of ever
16 having a valid driver license or permit issued by another
17 jurisdiction. This paragraph does not apply to the operation of an
18 implement of husbandry.

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

25 4. IN FURTHERANCE OF THE ILLEGAL PRESENCE OF AN ALIEN IN THE UNITED
26 STATES AND IN VIOLATION OF A CRIMINAL OFFENSE, THE PERSON IS TRANSPORTING
27 OR MOVING OR ATTEMPTING TO TRANSPORT OR MOVE AN ALIEN IN THIS STATE IN A
28 VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE
29 ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN
30 VIOLATION OF LAW.

31 5. THE PERSON IS CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING
32 TO CONCEAL, HARBOR OR SHIELD FROM DETECTION AN ALIEN IN THIS STATE IN A
33 VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE
34 ALIEN HAS COME TO, ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF
35 LAW.

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

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

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

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

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

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

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

16 2. The spouse of the driver is with the driver at the time of the
17 arrest.

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

20 (a) Has a valid driver license.

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

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

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

29 5. The spouse drives the vehicle as prescribed by paragraph 4 of
30 this subsection.

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

36 F. The owner of a vehicle that is removed and either immobilized or
37 impounded pursuant to subsection A, B or C of this section, the spouse of
38 the owner and each person identified on the department's record with an
39 interest in the vehicle shall be provided with an opportunity for an
40 immobilization or poststorage hearing pursuant to section 28-3514.

41 Sec. 11. Title 41, chapter 12, article 2, Arizona Revised Statutes,
42 is amended by adding section 41-1724, to read:

43 41-1724. Gang and immigration intelligence team enforcement
44 mission fund

1 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND
2 IS ESTABLISHED CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 11-1051
3 AND MONIES APPROPRIATED BY THE LEGISLATURE. THE DEPARTMENT SHALL
4 ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE
5 APPROPRIATION AND SHALL BE USED FOR GANG AND IMMIGRATION ENFORCEMENT AND
6 FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

7 Sec. 12. Severability, implementation and construction

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

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

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

19 D. Nothing in this act shall implement or shall be construed or
20 interpreted to implement or establish the REAL ID act of 2005 (P.L. 109-
21 13, division B; 119 Stat. 302) including the use of a radio frequency
22 identification chip.

23 Sec. 13. Short title

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

26 Sec. 14. Immigration legislation challenges

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

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

36
37