

REFERENCE TITLE: provisions; Arizona temporary worker program

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1508

Introduced by
Senators Arzberger, Bee, Flake; Representatives Brown, Konopnicki, Lopes,
Weiers J (with permission of committee on Rules)

AN ACT

AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING
TO THE ARIZONA TEMPORARY WORKER PROGRAM; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 23, Arizona Revised Statutes, is amended by adding
3 chapter 10, to read:

4 CHAPTER 10

5 ARIZONA TEMPORARY WORKER PROGRAM

6 ARTICLE 1. GENERAL PROVISIONS

7 23-1601. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "COMMISSION" MEANS THE INDUSTRIAL COMMISSION OF ARIZONA.

10 2. "DIRECTOR" MEANS THE DIRECTOR OF THE COMMISSION.

11 3. "EMPLOYER" MEANS AN EMPLOYER IN A BUSINESS INDUSTRY IN THIS STATE
12 THAT IS EXPERIENCING A LABOR SHORTAGE, INCLUDING AGRICULTURE AND DAIRY
13 INDUSTRIES.

14 4. "E-VERIFY PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PILOT PROGRAM
15 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
16 AND THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR PROGRAMS.

17 5. "FOREIGN WORKER" MEANS A WORKER WHO IS ELIGIBLE UNDER THIS ARTICLE
18 TO PROVIDE LABOR TO AN ELIGIBLE BUSINESS INDUSTRY IN THIS STATE.

19 23-1602. Arizona temporary worker program; program termination

20 A. THE ARIZONA TEMPORARY WORKER PROGRAM IS ESTABLISHED TO PROVIDE
21 FOREIGN WORKERS TO EMPLOYERS IN THIS STATE THAT ARE EXPERIENCING A LABOR
22 SHORTAGE.

23 B. TO PARTICIPATE IN THE ARIZONA TEMPORARY WORKER PROGRAM, AN EMPLOYER
24 SHALL FILE AN APPLICATION WITH THE COMMISSION AND SHALL BE REGISTERED WITH
25 AND PARTICIPATING IN THE E-VERIFY PROGRAM. THE DIRECTOR MAY REQUIRE THE
26 EMPLOYER TO PAY AN APPLICATION FEE. THE APPLICATION, ON A FORM PRESCRIBED BY
27 THE COMMISSION, SHALL INCLUDE:

28 1. THE NAME, ADDRESS AND FEDERAL INCOME TAX IDENTIFICATION NUMBER OF
29 THE EMPLOYER.

30 2. THE EMPLOYER'S BUSINESS INDUSTRY.

31 3. A DESCRIPTION OF THE LABOR SHORTAGE EXPERIENCED BY THE EMPLOYER AND
32 AN EXPLANATION OF THE EMPLOYER'S EFFORTS TO FIND LOCAL WORKERS WITH THE
33 NECESSARY SKILLS TO PROVIDE LABOR TO THE EMPLOYER.

34 4. A SIGNED SWORN AFFIDAVIT THAT INDICATES THAT THE EMPLOYER CANNOT
35 FIND AUTHORIZED WORKERS IN THE UNITED STATES. ANY FALSE STATEMENT MADE UNDER
36 THIS PARAGRAPH IS A VIOLATION OF SECTION 13-2703.

37 5. ANY ADDITIONAL INFORMATION THAT THE COMMISSION REQUIRES.

38 C. WITHIN THIRTY DAYS AFTER RECEIVING THE APPLICATION, THE COMMISSION
39 SHALL REVIEW AND MAKE A DETERMINATION WITH RESPECT TO THE EMPLOYER'S
40 PARTICIPATION IN THE ARIZONA TEMPORARY WORKER PROGRAM. IF APPROVED BY THE
41 COMMISSION, THE APPROVED EMPLOYER MAY RECRUIT FOREIGN WORKERS AT A UNITED
42 STATES CONSULATE IN THE REPUBLIC OF MEXICO TO PROVIDE LABOR FOR THE EMPLOYER
43 UNDER THE ARIZONA TEMPORARY WORKER PROGRAM.

1 D. AN APPROVED EMPLOYER THAT RECRUITS A FOREIGN WORKER SHALL OBTAIN AN
2 APPLICATION FROM THE FOREIGN WORKER THAT INCLUDES THE FOREIGN WORKER'S NAME,
3 PHOTOGRAPH AND FINGERPRINTS AND ANY OTHER NECESSARY BACKGROUND INFORMATION
4 REQUIRED BY THE COMMISSION. THE APPLICATION FOR THE FOREIGN WORKER,
5 INCLUDING THE PHOTOGRAPH AND FINGERPRINTS OF THE FOREIGN WORKER, SHALL BE
6 COMPLETED AT THE UNITED STATES CONSULATE. THE EMPLOYER SHALL SUBMIT THE
7 COMPLETED APPLICATION TO THE COMMISSION. THE COMMISSION SHALL COORDINATE
8 WITH THE DEPARTMENT OF PUBLIC SAFETY TO CONDUCT A STATE AND FEDERAL CRIMINAL
9 RECORDS CHECK PURSUANT TO SECTION 41-1750 AND PUBLIC LAW 92-544 AND DETERMINE
10 WHETHER THE FOREIGN WORKER IS ELIGIBLE TO PARTICIPATE IN THE ARIZONA
11 TEMPORARY WORKER PROGRAM. THE COMMISSION MAY CHARGE THE APPROVED EMPLOYER A
12 FEE FOR EACH CRIMINAL RECORDS CHECK. THE EMPLOYER SHALL ALSO OBTAIN A
13 CRIMINAL RECORDS CHECK OF THE FOREIGN WORKER FROM AN APPROPRIATE LAW
14 ENFORCEMENT AGENCY IN THE REPUBLIC OF MEXICO AND SUBMIT THE RESULTS TO THE
15 COMMISSION. A FOREIGN WORKER WHO HAS BEEN CONVICTED OF A CRIME IN THE UNITED
16 STATES IS NOT ELIGIBLE TO PARTICIPATE IN THE ARIZONA TEMPORARY WORKER
17 PROGRAM. A FOREIGN WORKER WHO HAS BEEN CONVICTED OF A CRIME IN THE REPUBLIC
18 OF MEXICO IS NOT ELIGIBLE TO PARTICIPATE IN THE ARIZONA TEMPORARY WORKER
19 PROGRAM IF THE CRIME WOULD HAVE BEEN A CLASS 1 MISDEMEANOR OR A FELONY IN
20 THIS STATE.

21 E. THE DEPARTMENT OF TRANSPORTATION SHALL PREPARE TEMPORARY WORKER
22 LEGAL IDENTIFICATION CARDS AND PROVIDE THE CARDS TO THE COMMISSION. ARIZONA
23 TEMPORARY WORKER LEGAL IDENTIFICATION CARDS SHALL BE NONFORGEABLE AND SHALL
24 MEET THE REQUIREMENTS PRESCRIBED BY FEDERAL LAW. THE IDENTIFICATION CARDS
25 SHALL CLEARLY INDICATE THE DATE ON WHICH THE TEMPORARY WORKER'S AUTHORIZED
26 PRESENCE IN THIS STATE EXPIRES. THE DIRECTOR OF THE COMMISSION SHALL REQUIRE
27 THE EMPLOYER TO PAY A FEE FOR THE PURPOSES OF ISSUING A TEMPORARY WORKER
28 LEGAL IDENTIFICATION CARD. ANY FEE THAT IS COLLECTED UNDER THIS SUBSECTION
29 SHALL BE USED FOR THE ADMINISTRATIVE COSTS INCURRED BY THE DEPARTMENT OF
30 TRANSPORTATION TO PREPARE TEMPORARY WORKER LEGAL IDENTIFICATION CARDS.

31 F. IF THE COMMISSION APPROVES A FOREIGN WORKER TO PARTICIPATE IN THE
32 ARIZONA TEMPORARY WORKER PROGRAM, THE COMMISSION SHALL ISSUE AN ARIZONA
33 TEMPORARY WORKER LEGAL IDENTIFICATION CARD FOR THE APPROVED FOREIGN WORKER
34 AND NOTIFY THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY
35 SHALL MAINTAIN A DATABASE OF APPROVED FOREIGN WORKERS. THE IDENTIFICATION
36 CARD SHALL BE ISSUED TO THE APPROVED EMPLOYER THAT RECRUITED THE FOREIGN
37 WORKER. THE APPROVED EMPLOYER IS RESPONSIBLE FOR DELIVERING THE
38 IDENTIFICATION CARD TO THE APPROVED FOREIGN WORKER AT THE UNITED STATES
39 CONSULATE IN THE REPUBLIC OF MEXICO. IF THE COMMISSION DETERMINES THAT THE
40 EMPLOYER KNOWINGLY FAILED TO DELIVER THE IDENTIFICATION CARD TO THE
41 APPROPRIATE APPROVED FOREIGN WORKER, THE APPROVED EMPLOYER SHALL SURRENDER
42 THE CARD TO THE COMMISSION. IF THE EMPLOYER FAILS TO SURRENDER THE CARD, THE
43 EMPLOYER BECOMES INELIGIBLE TO CONTINUE PARTICIPATING IN THE ARIZONA
44 TEMPORARY WORKER PROGRAM.

1 G. AN APPROVED FOREIGN WORKER SHALL NOT:
2 1. TRANSPORT A FAMILY MEMBER INTO THIS STATE FROM OUTSIDE OF THE
3 UNITED STATES UNLESS THE FAMILY MEMBER HAS OBTAINED AUTHORIZATION FROM THE
4 FEDERAL GOVERNMENT TO ENTER OR REMAIN IN THE UNITED STATES LAWFULLY.
5 2. FILE FOR UNEMPLOYMENT BENEFITS.
6 H. AS PRESCRIBED BY FEDERAL LAW, AN APPROVED FOREIGN WORKER WHO HAS
7 RECEIVED AN ARIZONA TEMPORARY WORKER LEGAL IDENTIFICATION CARD MAY ENTER THE
8 UNITED STATES AND RETURN TO THE REPUBLIC OF MEXICO THROUGH A PORT OF ENTRY ON
9 THE ARIZONA BORDER. AN APPROVED FOREIGN WORKER WHO HAS AN ARIZONA TEMPORARY
10 WORKER LEGAL IDENTIFICATION CARD MAY WORK ONLY IN THIS STATE AND MAY NOT
11 TRAVEL OUTSIDE THIS STATE.
12 I. THE COMMISSION SHALL REVOKE THE ARIZONA TEMPORARY WORKER LEGAL
13 IDENTIFICATION CARD OF ANY APPROVED FOREIGN WORKER WHO EITHER:
14 1. IS REPORTED ABSENT FROM WORK WITHOUT APPROVAL BY AN APPROVED
15 EMPLOYER FOR FOURTEEN CONSECUTIVE DAYS.
16 2. IS UNABLE TO BE LOCATED BY AN APPROVED EMPLOYER.
17 3. IS DETERMINED TO HAVE TRAVELED OUTSIDE THIS STATE.
18 4. IS CONVICTED OF A CRIME IN THIS STATE.
19 5. IS NO LONGER EMPLOYED BY AN APPROVED EMPLOYER.
20 6. GIVES, SELLS OR LENDS THE FOREIGN WORKER'S TEMPORARY WORKER LEGAL
21 IDENTIFICATION CARD TO ANY OTHER PERSON FOR THE PURPOSES OF OBTAINING
22 EMPLOYMENT.
23 J. IF AN APPROVED EMPLOYER TERMINATES AN APPROVED FOREIGN WORKER, THE
24 EMPLOYER SHALL NOTIFY THE COMMISSION WITHIN THREE BUSINESS DAYS AND THE
25 COMMISSION SHALL REVOKE THE FOREIGN WORKER'S TEMPORARY WORKER IDENTIFICATION
26 CARD.
27 K. IF THE COMMISSION REVOKES A FOREIGN WORKER'S ARIZONA TEMPORARY
28 WORKER LEGAL IDENTIFICATION CARD, THE FOREIGN WORKER SHALL LEAVE THIS STATE
29 WITHIN THREE BUSINESS DAYS. ON REQUEST BY THE FOREIGN WORKER, THE COMMISSION
30 MAY PROVIDE ADDITIONAL TIME UP TO FOURTEEN DAYS FOR THE FOREIGN WORKER TO
31 LEAVE THIS STATE. ON REQUEST OF THE FOREIGN WORKER, THE EMPLOYER SHALL
32 PROVIDE REASONABLE TRANSPORTATION FOR THE FOREIGN WORKER TO THE PORT OF ENTRY
33 NEAREST THE UNITED STATES CONSULATE IN THE REPUBLIC OF MEXICO WHERE THE
34 FOREIGN WORKER MADE THE ORIGINAL APPLICATION UNDER THIS SECTION.
35 L. IF THE COMMISSION REVOKES AN ARIZONA TEMPORARY WORKER LEGAL
36 IDENTIFICATION CARD OF A FOREIGN WORKER, THE COMMISSION SHALL NOTIFY THE
37 DEPARTMENT OF PUBLIC SAFETY AND THE UNITED STATES IMMIGRATION AND CUSTOMS
38 ENFORCEMENT THAT THE FOREIGN WORKER IS NO LONGER AUTHORIZED TO BE IN THE
39 UNITED STATES. THE NOTICE SHALL INCLUDE THE LAST KNOWN ADDRESS OF THE
40 FOREIGN WORKER. ON RECEIPT OF A NOTICE UNDER THIS SUBSECTION, THE DEPARTMENT
41 OF PUBLIC SAFETY SHALL REVOKE THE APPROVED STATUS OF THE FOREIGN WORKER IN
42 THE DEPARTMENT'S DATABASE.

1 M. UNLESS REVOKED, AN ARIZONA TEMPORARY WORKER LEGAL IDENTIFICATION
2 CARD ISSUED UNDER THIS SECTION IS VALID FOR TWO YEARS. THE CARD MAY BE
3 RENEWED ON APPLICATION OF THE APPROVED EMPLOYER AND ON APPROVAL BY THE
4 COMMISSION. THE DIRECTOR MAY REQUIRE THE EMPLOYER TO PAY A RENEWAL FEE.

5 N. ANY APPLICATION OR RENEWAL FEES OR FEES FOR CRIMINAL RECORDS CHECKS
6 THAT THE COMMISSION COLLECTS UNDER THIS SECTION SHALL BE USED PROPORTIONATELY
7 FOR THE ADMINISTRATIVE COSTS INCURRED BY THE COMMISSION AND THE DEPARTMENT OF
8 PUBLIC SAFETY FOR THE PURPOSES OF THIS SECTION.

9 O. IF AN APPROVED EMPLOYER OFFERS VACATION TIME TO AN APPROVED FOREIGN
10 WORKER, THE EMPLOYER SHALL OBTAIN THE ADDRESS WHERE THE FOREIGN WORKER CAN BE
11 LOCATED DURING THE TIME OF VACATION. AN EMPLOYER THAT FAILS TO MAINTAIN
12 RECORDS UNDER THIS SUBSECTION IS INELIGIBLE TO PARTICIPATE IN THE ARIZONA
13 TEMPORARY WORKER PROGRAM.

14 P. AN APPROVED EMPLOYER SHALL COMPLY WITH ALL LABOR LAWS PRESCRIBED BY
15 THE FEDERAL GOVERNMENT AND THIS STATE.

16 Q. ANY CITIZEN OF THE UNITED STATES MAY FILE A COMPLAINT WITH THE
17 COMMISSION IF A LOCAL WORKER IS TERMINATED OR NOT HIRED AS A RESULT OF THE
18 EMPLOYER'S PARTICIPATION IN THE PROGRAM. THE COMMISSION SHALL EVALUATE ALL
19 COMPLAINTS. IF SUFFICIENT COMPLAINTS ARE RECEIVED AGAINST A SPECIFIC
20 EMPLOYER, THE COMMISSION SHALL REEXAMINE THE EMPLOYER'S APPLICATION TO
21 PARTICIPATE IN THE ARIZONA TEMPORARY WORKER PROGRAM. THE COMMISSION MAY
22 REVOKE THE EMPLOYER'S AUTHORIZATION TO PARTICIPATE IN THE PROGRAM IF THE
23 COMMISSION DETERMINES THAT THE EMPLOYER DID NOT TAKE SUFFICIENT MEASURES TO
24 OBTAIN LOCAL WORKERS.

25 R. THE COMMISSION SHALL ADOPT RULES NECESSARY FOR THE ADMINISTRATION
26 OF THIS SECTION AND FOR THE PURPOSES OF THIS SECTION IS EXEMPT FROM THE RULE
27 MAKING REQUIREMENTS OF TITLE 41, CHAPTER 6.

28 S. PURSUANT TO SECTION 41-3102, THE PROGRAM ESTABLISHED BY THIS
29 SECTION ENDS TEN YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION.

30 Sec. 2. Conditional enactment; notice

31 A. This act is not effective unless the federal government authorizes
32 this state to implement a temporary worker program or other similar program.

33 B. The attorney general shall notify in writing the director of the
34 legislative council of the date on which this condition occurs.