

REFERENCE TITLE: fair and legal employment; referendum

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HCR 2051

Introduced by
Representatives Pearce, Barnes, Boone, Burges, Farnsworth, Groe, Kavanagh,
Murphy, Yarbrough, Senators Bee, Blendu, Johnson, Verschoor:
Representatives Anderson, Biggs, Clark, McClure, McComish, McLain,
Nichols, Robson, Stump, Weiers J, Senators Gould, Gray L, Harper (with
permission of committee on Rules)

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO
EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,
4 the following measure, relating to employment of unauthorized aliens, is
5 enacted to become valid as a law if approved by the voters and on
6 proclamation of the Governor:

7 AN ACT

8 AMENDING SECTION 13-2009, ARIZONA REVISED STATUTES; AMENDING
9 TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE
10 2; AMENDING TITLE 26, CHAPTER 1, ARTICLE 1, ARIZONA REVISED
11 STATUTES, BY ADDING SECTION 26-103; AMENDING SECTION 41-763,
12 ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARIZONA
13 REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING TITLE 41,
14 CHAPTER 23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
15 SECTION 41-2505; AMENDING SECTION 43-1021, ARIZONA REVISED
16 STATUTES; RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS.

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

18 Section 1. Section 13-2009, Arizona Revised Statutes, is
19 amended to read:

20 13-2009. Aggravated taking identity of another person or
21 entity; classification

22 A. A person commits aggravated taking the identity of
23 another person or entity if the person knowingly takes,
24 purchases, manufactures, records, possesses or uses any personal
25 identifying information or entity identifying information of
26 either:

27 1. Five or more other persons or entities, including real
28 or fictitious persons or entities, without the consent of the
29 other persons or entities, with the intent to obtain or use the
30 other persons' or entities' identities for any unlawful purpose
31 or to cause loss to the persons or entities whether or not the
32 persons or entities actually suffer any economic loss.

33 2. Another person or entity, including a real or
34 fictitious person or entity, without the consent of that other
35 person or entity, with the intent to obtain or use the other
36 person's or entity's identity for any unlawful purpose and
37 causes another person or entity to suffer an economic loss of
38 three thousand dollars or more.

39 3. ANOTHER PERSON, INCLUDING A REAL OR FICTITIOUS PERSON,
40 WITH THE INTENT TO OBTAIN EMPLOYMENT.

41 B. In an action for aggravated taking the identity of
42 another person or entity under subsection A, paragraph 1 of this
43 section, proof of possession out of the regular course of
44 business of the personal identifying information or entity
45 identifying information of five or more other persons or

entities may give rise to an inference that the personal identifying information or entity identifying information of the five or more other persons or entities was possessed for an unlawful purpose.

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

D. Aggravated taking the identity of another person or entity is a class 3 felony.

Sec. 2. Title 23, chapter 2, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS

23-211. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

3. "BUSINESS ENTITY" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT HAS IN ITS EMPLOY ONE OR MORE INDIVIDUALS PERFORMING SERVICES FOR IT IN EMPLOYMENT, WHETHER FOR PROFIT OR NOT FOR PROFIT. BUSINESS ENTITY INCLUDES SELF-EMPLOYED PERSONS.

4. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS WORK OR A SERVICE OF ANY KIND OR CHARACTER FOR HIRE.

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

6. "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).

23-212. Employment of unauthorized aliens; prohibition; verification; affidavit; violation; classification

A. ANY BUSINESS ENTITY IN THIS STATE SHALL NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

B. BEFORE FILING ARTICLES OF INCORPORATION UNDER TITLE 10 OR A CERTIFICATE OF PARTNERSHIP, A PARTNERSHIP REGISTRATION OR ARTICLES OF ORGANIZATION UNDER TITLE 29, EVERY BUSINESS ENTITY SHALL FILE A SIGNED SWORN AFFIDAVIT WITH THE SECRETARY OF STATE THAT INDICATES THAT THE BUSINESS ENTITY DOES NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN AND THAT THE BUSINESS ENTITY WILL

NOT DIRECT ANY OTHER PERSON TO EMPLOY AN UNAUTHORIZED ALIEN. ON RECEIPT OF THE AFFIDAVIT, THE SECRETARY OF STATE SHALL DISTRIBUTE TO THE BUSINESS ENTITY AN INFORMATIONAL PAMPHLET REGARDING THE BASIC PILOT PROGRAM AND FEDERAL IMMIGRATION LAWS.

C. A PERSON OR BUSINESS ENTITY COMMITS FALSE SWEARING UNDER THIS SECTION BY FILING A FALSE SWORN AFFIDAVIT, BELIEVING IT TO BE FALSE. FALSE SWEARING UNDER THIS SECTION IS:

1. FOR A FIRST VIOLATION, A CLASS 6 FELONY. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF AT LEAST FIVE THOUSAND DOLLARS BUT NOT MORE THAN FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

2. FOR A SECOND VIOLATION, A CLASS 6 FELONY, AND THE COURT SHALL NOT ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR PURSUANT TO SECTION 13-702, SUBSECTION G. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF AT LEAST TEN THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

3. FOR A THIRD VIOLATION, A CLASS 5 FELONY. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF AT LEAST FIFTEEN THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

D. IF THE ATTORNEY GENERAL DETERMINES THAT A BUSINESS ENTITY HAS FILED A FALSE SWORN AFFIDAVIT UNDER THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY THE COUNTY ATTORNEY TO PROSECUTE THE BUSINESS ENTITY FOR FILING A FALSE SWORN AFFIDAVIT.

E. ON A CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT SHALL REPORT THE CONVICTION TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL DETERMINE THE APPROPRIATE ACTION PURSUANT TO SECTION 23-213 AND NOTIFY THE APPROPRIATE AGENCY.

23-213. Employment of unauthorized aliens; enforcement; suspension of license

A. ON RECEIPT OF A SIGNED WRITTEN COMPLAINT THAT A BUSINESS ENTITY ALLEGEDLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL INVESTIGATE WHETHER THE BUSINESS ENTITY HAS VIOLATED SECTION 23-212. THE COMPLAINT SHALL INDICATE THE NAME OF THE BUSINESS ENTITY THAT ALLEGEDLY VIOLATED SECTION 23-212, THE SPECIFIC ACTIONS THAT CONSTITUTE THE ALLEGED VIOLATION AND THE DATE AND LOCATION OF THE ALLEGED VIOLATION. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT

1 INVESTIGATE A COMPLAINT THAT IS SOLELY OR PRIMARILY BASED ON
2 NATIONAL ORIGIN, ETHNICITY OR RACE.

3 B. WITHIN THREE BUSINESS DAYS AFTER RECEIVING A COMPLAINT
4 UNDER SUBSECTION A OF THIS SECTION, THE ATTORNEY GENERAL OR
5 COUNTY ATTORNEY SHALL NOTIFY THE BUSINESS ENTITY OF THE
6 COMPLAINT AND REQUEST THAT THE BUSINESS ENTITY PROVIDE THE
7 IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN. THE BUSINESS ENTITY
8 SHALL PROVIDE THE IDENTITY OF THE ALLEGED UNAUTHORIZED ALIEN
9 WITHIN THREE BUSINESS DAYS AFTER RECEIVING THE REQUEST FROM THE
10 ATTORNEY GENERAL OR COUNTY ATTORNEY.

11 C. AFTER RECEIVING THE IDENTITY OF AN ALLEGED
12 UNAUTHORIZED ALIEN UNDER SUBSECTION B OF THIS SECTION, THE
13 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL SUBMIT THE IDENTITY OF
14 THE ALLEGED UNAUTHORIZED ALIEN FOR VERIFICATION TO THE FEDERAL
15 GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373. AFTER
16 RECEIVING THE RESULTS OF THE VERIFICATION FROM THE FEDERAL
17 GOVERNMENT, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY
18 THE BUSINESS ENTITY EITHER THAT THE COMPLAINT IS VALID OR THAT
19 THE COMPLAINT IS DISMISSED. IF THE COMPLAINT IS VALID, THE
20 BUSINESS ENTITY HAS THREE BUSINESS DAYS TO CORRECT THE VIOLATION
21 IN THE MANNER PRESCRIBED IN SUBSECTION D OF THIS SECTION. IF
22 THE BUSINESS ENTITY FAILS TO CORRECT THE VIOLATION, THE ATTORNEY
23 GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY
24 TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY AND THE
25 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE.

26 D. A BUSINESS ENTITY MAY CORRECT A VIOLATION UNDER
27 SUBSECTION C OF THIS SECTION BY DOING EITHER OF THE FOLLOWING:

28 1. TERMINATING THE EMPLOYMENT OF THE UNAUTHORIZED ALIEN.
29 IF THE TERMINATION IS CHALLENGED IN SUPERIOR COURT, THE REQUIRED
30 THREE BUSINESS DAYS TO CORRECT THE VIOLATION UNDER SUBSECTION C
31 OF THIS SECTION SHALL BE TOLLED WHILE THE CHALLENGE IS
32 ADJUDICATED. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS
33 PARAGRAPH, THE COURT SHALL EXPEDITE THE ACTION, INCLUDING
34 ASSIGNING THE HEARING AT THE EARLIEST PRACTICABLE DATE.

35 2. ACQUIRING ADDITIONAL INFORMATION FROM THE EMPLOYEE TO
36 VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE
37 BASIC PILOT PROGRAM, AND THE VERIFICATION DETERMINES THAT THE
38 EMPLOYEE IS AUTHORIZED TO WORK IN THE UNITED STATES. THE
39 REQUIRED THREE BUSINESS DAYS TO CORRECT THE VIOLATION UNDER
40 SUBSECTION C OF THIS SECTION SHALL BE TOLLED WHILE THE
41 VERIFICATION IS CONDUCTED UNDER THIS PARAGRAPH.

42 E. IF THE BUSINESS ENTITY FAILS TO PROVIDE THE IDENTITY
43 OF THE ALLEGED UNAUTHORIZED ALIEN WITHIN THE REQUIRED THREE
44 BUSINESS DAYS PURSUANT TO SUBSECTION B OF THIS SECTION, THE
45 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE

1 AGENCY TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY AND THE
2 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE. THE
3 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE
4 AGENCY AND THE APPROPRIATE AGENCY SHALL REINSTATE A BUSINESS
5 ENTITY'S SUSPENDED LICENSE UNDER THIS SUBSECTION IF THE BUSINESS
6 ENTITY FILES A SIGNED AFFIDAVIT WITH THE ATTORNEY GENERAL OR
7 COUNTY ATTORNEY CONTAINING THE FOLLOWING:

8 1. A DESCRIPTION OF THE BUSINESS ENTITY'S ACTIONS TO
9 CORRECT THE VIOLATION.

10 2. A LIST OF THE NAMES AND ADDRESSES OF THE UNAUTHORIZED
11 ALIENS THAT WERE THE BASIS OF THE COMPLAINT.

12 3. AN AFFIRMATION THAT THE BUSINESS ENTITY IS ENROLLED IN
13 AND IS PARTICIPATING TO THE FULLEST EXTENT IN THE BASIC PILOT
14 PROGRAM.

15 F. FOR A SECOND VIOLATION UNDER THIS SECTION, THE
16 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE
17 AGENCY TO SUSPEND THE LICENSE OF THE BUSINESS ENTITY AND THE
18 APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE LICENSE. THE
19 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOT NOTIFY THE
20 APPROPRIATE AGENCY TO REINSTATE THE BUSINESS LICENSE UNTIL THE
21 BUSINESS ENTITY TAKES CORRECTIVE ACTION PURSUANT TO SUBSECTION D
22 OF THIS SECTION AND FILES THE SIGNED AFFIDAVIT THAT IS REQUIRED
23 UNDER SUBSECTION E OF THIS SECTION.

24 G. FOR A THIRD VIOLATION UNDER THIS SECTION, THE ATTORNEY
25 GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE APPROPRIATE AGENCY
26 TO REVOKE THE LICENSE OF THE BUSINESS ENTITY AND THE APPROPRIATE
27 AGENCY SHALL PERMANENTLY REVOKE THE LICENSE.

28 H. ON COMPLETION OF THE PROCESSING OF A VALID COMPLAINT
29 PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL OR COUNTY
30 ATTORNEY SHALL FORWARD A COPY OF THE COMPLAINT AND ANY
31 ASSOCIATED DOCUMENTS TO THE UNITED STATES IMMIGRATION AND
32 CUSTOMS ENFORCEMENT.

33 I. NOTWITHSTANDING ANY OTHER LAW, ANY COUNTY, CITY OR
34 TOWN THAT FAILS TO SUSPEND A LICENSE AS ORDERED BY THE ATTORNEY
35 GENERAL UNDER THIS SECTION SHALL NOT RECEIVE ANY FUNDING FROM
36 THIS STATE.

37 J. ANY BUSINESS ENTITY THAT IS SUBJECT TO ENFORCEMENT
38 UNDER THIS SECTION MAY CHALLENGE THE ENFORCEMENT IN SUPERIOR
39 COURT. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE
40 COURT SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING
41 AT THE EARLIEST PRACTICABLE DATE. ON DETERMINING WHETHER A
42 PERSON IS AN UNAUTHORIZED ALIEN, THE COURT SHALL CONSIDER ONLY
43 THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO 8 UNITED
44 STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S
45 DETERMINATION CREATES A REBUTTABLE PRESUMPTION OF THE PERSON'S

1 LAWFUL STATUS. THE COURT MAY TAKE JUDICIAL NOTICE OF THE
2 FEDERAL GOVERNMENT'S DETERMINATION AND MAY REQUEST THE FEDERAL
3 GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL VERIFICATION
4 PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

5 Sec. 3. Title 26, chapter 1, article 1, Arizona Revised
6 Statutes, is amended by adding section 26-103, to read:

7 26-103. Immigration enforcement fund

8 THE IMMIGRATION ENFORCEMENT FUND IS ESTABLISHED CONSISTING
9 OF ASSESSMENTS DEPOSITED PURSUANT TO SECTIONS 23-212 AND
10 41-1080.01. THE DEPARTMENT OF MILITARY AFFAIRS AND EMERGENCY
11 MANAGEMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND:

12 1. ARE SUBJECT TO LEGISLATIVE APPROPRIATION.

13 2. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
14 RELATING TO LAPSING OF APPROPRIATIONS.

15 3. SHALL BE USED TO REIMBURSE AGENCIES AND DEPARTMENTS OF
16 THIS STATE AND OF POLITICAL SUBDIVISIONS OF THIS STATE FOR COSTS
17 INCURRED IN ENFORCING IMMIGRATION LAWS.

18 Sec. 4. Section 41-763, Arizona Revised Statutes, is
19 amended to read:

20 41-763. Powers and duties of the director relating to
21 personnel

22 The director shall:

23 1. Appoint employees necessary to perform the duties
24 prescribed by this article.

25 2. Have authority for developing and administering a
26 program of personnel administration for the state service in
27 conformance with the personnel rules.

28 3. Have authority to establish such offices as may be
29 necessary to maintain an effective and economical program of
30 personnel administration.

31 4. Have the power to deputize employees in various state
32 agencies where certain of the functions of personnel
33 administration can be performed by such deputies.

34 5. Make an annual report and recommendation to the
35 legislature and the joint legislative budget committee as
36 provided in section 41-763.01.

37 6. Adopt rules relating to personnel and personnel
38 administration.

39 7. Subject to legislative appropriation, have the
40 authority to contract for the services of consultants necessary
41 to perform the annual salary plan and salary plan adjustment
42 recommendations.

43 8. Establish a mandatory program of annual personnel
44 management training for all state employees with supervisory or
45 managerial responsibility that is appropriate to the nature and

scope of the employees' supervisory responsibilities. The director may waive the annual mandatory training on a case by case basis. The training shall include at least the following subjects:

- (a) Basic employee supervisory or managerial skills.
- (b) Establishing employee objectives and performance measures.
- (c) Measuring employee performance and the use of performance evaluation methods.
- (d) Employee discipline training and discipline procedures.
- (e) Other subjects as determined by the director.

9. VERIFY THE AUTHORIZATION FOR EMPLOYMENT IN THE UNITED STATES OF EVERY STATE EMPLOYEE THROUGH THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM. THIS PARAGRAPH APPLIES ONLY TO EMPLOYEES WHO ARE HIRED AFTER THIS STATE HAS AGREED TO THE MEMORANDUM OF UNDERSTANDING THAT IS REQUIRED TO PARTICIPATE IN THE PILOT PROGRAM.

Sec. 5. Title 41, chapter 6, Arizona Revised Statutes, is amended by adding article 7.2, to read:

ARTICLE 7.2. LICENSING ELIGIBILITY

41-1080. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

2. "BASIC PILOT PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

3. "BUSINESS ENTITY" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT HAS IN ITS EMPLOY ONE OR MORE INDIVIDUALS PERFORMING SERVICES FOR IT IN EMPLOYMENT, WHETHER FOR PROFIT OR NOT FOR PROFIT. BUSINESS ENTITY INCLUDES SELF-EMPLOYED PERSONS.

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

41-1080.01. Licensing; employee verification; signed affidavit; violation; classification

A. BEFORE RECEIVING A LICENSE OR A RENEWAL OF A LICENSE FROM AN AGENCY, A BUSINESS ENTITY SHALL FILE A SIGNED SWORN AFFIDAVIT WITH THE AGENCY THAT STATES THAT THE BUSINESS ENTITY

DOES NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN AND THAT THE BUSINESS ENTITY WILL NOT DIRECT ANY OTHER PERSON TO EMPLOY AN UNAUTHORIZED ALIEN. AN AGENCY SHALL NOT ISSUE OR RENEW A LICENSE TO ANY BUSINESS ENTITY THAT FAILS TO SUBMIT THE SIGNED AFFIDAVIT.

B. A PERSON OR BUSINESS ENTITY COMMITS FALSE SWEARING UNDER THIS SECTION BY FILING A FALSE SWORN AFFIDAVIT, BELIEVING IT TO BE FALSE. FALSE SWEARING UNDER THIS SECTION IS:

1. FOR A FIRST VIOLATION, A CLASS 6 FELONY. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF AT LEAST FIVE THOUSAND DOLLARS BUT NOT MORE THAN FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

2. FOR A SECOND VIOLATION, A CLASS 6 FELONY, AND THE COURT SHALL NOT ENTER AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR PURSUANT TO SECTION 13-702, SUBSECTION G. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF AT LEAST TEN THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

3. FOR A THIRD VIOLATION, A CLASS 5 FELONY. THE PERSON OR BUSINESS ENTITY SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE AT LEAST FIFTEEN THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE IMMIGRATION ENFORCEMENT FUND ESTABLISHED BY SECTION 26-103. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE.

C. IF THE ATTORNEY GENERAL DETERMINES THAT A BUSINESS ENTITY HAS FILED A FALSE SWORN AFFIDAVIT UNDER THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY THE COUNTY ATTORNEY TO PROSECUTE THE BUSINESS ENTITY FOR FILING A FALSE SWORN AFFIDAVIT.

D. ON A CONVICTION FOR A VIOLATION OF THIS SECTION, THE COURT SHALL REPORT THE CONVICTION TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL DETERMINE THE APPROPRIATE ACTION PURSUANT TO SECTION 23-213 AND NOTIFY THE APPROPRIATE AGENCY.

Sec. 6. Title 41, chapter 23, article 1, Arizona Revised Statutes, is amended by adding section 41-2505, to read:

41-2505. Awarded contracts; employee verification; definition

A. A PROCUREMENT OFFICER OF THIS STATE SHALL NOT AWARD A CONTRACT UNDER THIS CHAPTER THAT EXCEEDS TEN THOUSAND DOLLARS TO ANY CONTRACTOR OR SUBCONTRACTOR UNLESS THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTOR HAS BEEN VERIFIED BY THE CONTRACTOR OR SUBCONTRACTOR THROUGH THE

1 BASIC PILOT PROGRAM. THE CONTRACTOR OR SUBCONTRACTOR SHALL FILE
2 A SIGNED AFFIDAVIT WITH THE PROCUREMENT OFFICER THAT STATES THAT
3 THE CONTRACTOR OR SUBCONTRACTOR IS ENROLLED AND PARTICIPATES IN
4 THE BASIC PILOT PROGRAM.

5 B. FOR THE PURPOSES OF THIS SECTION, "BASIC PILOT
6 PROGRAM" MEANS THE BASIC EMPLOYMENT VERIFICATION PILOT PROGRAM
7 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF
8 HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION OR ITS
9 SUCCESSOR PROGRAM.

10 Sec. 7. Section 43-1021, Arizona Revised Statutes, is
11 amended to read:

12 43-1021. Additions to Arizona gross income

13 In computing Arizona adjusted gross income, the following
14 amounts shall be added to Arizona gross income:

15 1. A beneficiary's share of the fiduciary adjustment to
16 the extent that the amount determined by section 43-1333
17 increases the beneficiary's Arizona gross income.

18 2. An amount equal to the "ordinary income portion" of a
19 lump sum distribution that was excluded from federal adjusted
20 gross income pursuant to section 402(d) of the internal revenue
21 code.

22 3. The amount of interest income received on obligations
23 of any state, territory or possession of the United States, or
24 any political subdivision thereof, located outside the state of
25 Arizona, reduced, for tax years beginning from and after
26 December 31, 1996, by the amount of any interest on indebtedness
27 and other related expenses that were incurred or continued to
28 purchase or carry those obligations and that are not otherwise
29 deducted or subtracted in arriving at Arizona gross income.

30 4. Annuity income received during the taxable year to the
31 extent that the sum of the proceeds received from such annuity
32 in all taxable years prior to and including the current taxable
33 year exceeds the total consideration and premiums paid by the
34 taxpayer. This paragraph applies only to those annuities with
35 respect to which the first payment was received prior to
36 December 31, 1978.

37 5. The excess of a partner's share of partnership taxable
38 income required to be included under chapter 14, article 2 of
39 this title over the income required to be reported under section
40 702(a)(8) of the internal revenue code.

41 6. The excess of a partner's share of partnership losses
42 determined pursuant to section 702(a)(8) of the internal revenue
43 code over the losses allowable under chapter 14, article 2 of
44 this title.

1 7. The amount by which the adjusted basis of property
2 described in this paragraph and computed pursuant to the
3 internal revenue code exceeds the adjusted basis of such
4 property computed pursuant to this title and the income tax act
5 of 1954, as amended. This paragraph shall apply to all property
6 which is held for the production of income and which is sold or
7 otherwise disposed of during the taxable year, except
8 depreciable property used in a trade or business.

9 8. The amount of depreciation or amortization of costs of
10 any capital investment that is deducted pursuant to section 167
11 or 179 of the internal revenue code by a qualified defense
12 contractor with respect to which an election is made to amortize
13 pursuant to section 43-1024.

14 9. The amount of gain from the sale or other disposition
15 of a capital investment which a qualified defense contractor has
16 elected to amortize pursuant to section 43-1024.

17 10. Amounts withdrawn from the Arizona state retirement
18 system, the corrections officer retirement plan, the public
19 safety personnel retirement system, the elected officials'
20 retirement plan or a county or city retirement plan by an
21 employee upon termination of employment before retirement to the
22 extent they were deducted in arriving at Arizona taxable income
23 in any year.

24 11. That portion of the net operating loss included in
25 federal adjusted gross income which has already been taken as a
26 net operating loss for Arizona purposes or which is separately
27 taken as a subtraction under the special net operating loss
28 transition rule.

29 12. Any nonitemized amount deducted pursuant to section
30 170 of the internal revenue code representing contributions to
31 an educational institution which denies admission, enrollment or
32 board and room accommodations on the basis of race, color or
33 ethnic background except those institutions primarily
34 established for the education of American Indians.

35 13. The amount paid as taxes on property in this state
36 with respect to which a credit is claimed under section 43-1078.

37 14. Amounts withdrawn from a medical savings account by
38 the individual during the taxable year computed pursuant to
39 section 220(f) of the internal revenue code and not included in
40 federal adjusted gross income.

41 15. Any amount of agricultural water conservation expenses
42 that were deducted pursuant to the internal revenue code for
43 which a credit is claimed under section 43-1084.

1 16. The amount by which the depreciation or amortization
2 computed under the internal revenue code with respect to
3 property for which a credit was taken under section 43-1080
4 exceeds the amount of depreciation or amortization computed
5 pursuant to the internal revenue code on the Arizona adjusted
6 basis of the property.

7 17. The amount by which the adjusted basis computed under
8 the internal revenue code with respect to property for which a
9 credit was claimed under section 43-1080 and which is sold or
10 otherwise disposed of during the taxable year exceeds the
11 adjusted basis of the property computed under section 43-1080.

12 18. The amount by which the depreciation or amortization
13 computed under the internal revenue code with respect to
14 property for which a credit was taken under either section
15 43-1081 or 43-1081.01 exceeds the amount of depreciation or
16 amortization computed pursuant to the internal revenue code on
17 the Arizona adjusted basis of the property.

18 19. The amount by which the adjusted basis computed under
19 the internal revenue code with respect to property for which a
20 credit was claimed under section 43-1074.02, 43-1081 or
21 43-1081.01 and which is sold or otherwise disposed of during the
22 taxable year exceeds the adjusted basis of the property computed
23 under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

24 20. The deduction referred to in section 1341(a)(4) of the
25 internal revenue code for restoration of a substantial amount
26 held under a claim of right.

27 21. The amount by which a net operating loss carryover or
28 capital loss carryover allowable pursuant to section 1341(b)(5)
29 of the internal revenue code exceeds the net operating loss
30 carryover or capital loss carryover allowable pursuant to
31 section 43-1029, subsection F.

32 22. Any amount deducted pursuant to section 170 of the
33 internal revenue code representing contributions to a school
34 tuition organization or a public school for which a credit is
35 claimed under section 43-1089 or 43-1089.01.

36 23. Any amount deducted in computing Arizona gross income
37 as expenses for installing solar stub outs or electric vehicle
38 recharge outlets in this state with respect to which a credit is
39 claimed pursuant to section 43-1090.

40 24. Any wage expenses deducted pursuant to the internal
41 revenue code for which a credit is claimed under section 43-1087
42 and representing net increases in qualified employment positions
43 for employment of temporary assistance for needy families
44 recipients.

1 25. Any amount deducted for conveying ownership or
2 development rights of property to an agricultural preservation
3 district under section 48-5702 for which a credit is claimed
4 under section 43-1081.02.

5 26. The amount of any depreciation allowance allowed
6 pursuant to section 167(a) of the internal revenue code to the
7 extent not previously added.

8 27. With respect to property for which an expense
9 deduction was taken pursuant to section 179 of the internal
10 revenue code, the amount in excess of twenty-five thousand
11 dollars.

12 28. The amount of any deductions that are claimed in
13 computing federal adjusted gross income representing expenses
14 for which a credit is claimed under section 43-1075.

15 29. The amount by which the depreciation or amortization
16 computed under the internal revenue code with respect to
17 property for which a credit was taken under section 43-1090.01
18 exceeds the amount of depreciation or amortization computed
19 pursuant to the internal revenue code on the Arizona adjusted
20 basis of the property.

21 30. The amount by which the adjusted basis computed under
22 the internal revenue code with respect to property for which a
23 credit was claimed under section 43-1090.01 and which is sold or
24 otherwise disposed of during the taxable year exceeds the
25 adjusted basis of the property computed under section
26 43-1090.01.

27 31. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS
28 PAID TO AN UNAUTHORIZED ALIEN WHO IS KNOWINGLY HIRED BY THE
29 TAXPAYER AND THAT IS DEDUCTED AS A BUSINESS EXPENSE UNDER
30 SECTION 162 OF THE INTERNAL REVENUE CODE. FOR THE PURPOSES OF
31 THIS PARAGRAPH, "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT
32 HAVE THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK
33 IN THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE
34 SECTION 1324a(h)(3).

35 Sec. 8. Severability

36 If any provision of this act or its application to any
37 person or circumstance is held invalid, the invalidity does not
38 affect other provisions or applications of this act that can be
39 given effect without the invalid provision or application, and
40 to this end the provisions of this act are severable.

41 Sec. 9. Legislative findings

42 The Legislature finds that this act complies with the
43 requirements of 8 United States Code section 1324(a)(h)(2) by
44 addressing employer sanctions through licensure and similar
45 means. Criminal penalties contained in this act are associated

1 exclusively with the state crime of false swearing on
2 application for a license or on the filing of articles of
3 incorporation for a business, not the act of employing
4 unauthorized persons.

5 Sec. 10. Short title

6 This act shall be known as and may be cited as the
7 "Arizona Fair and Legal Employment Act."

8 2. The Secretary of State shall submit this proposition to the voters
9 at the next general election as provided by article IV, part 1, section 1,
10 Constitution of Arizona.