

REFERENCE TITLE: employer sanctions; hiring unauthorized aliens

State of Arizona
House of Representatives
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HB 2346

Introduced by
Representatives Konopnicki, Brown, Pancrazi, Ulmer, Senators Aguirre:
Allen, Arzberger, Flake

AN ACT

AMENDING SECTIONS 23-211 AND 23-212, ARIZONA REVISED STATUTES; RELATING TO
EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-211, Arizona Revised Statutes, is amended to
3 read:

4 23-211. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Agency" means any agency, department, board or commission of this
7 state or a county, city or town that issues a license for purposes of
8 operating a business in this state.

9 2. "Basic pilot program" means the basic employment verification pilot
10 program as jointly administered by the United States department of homeland
11 security and the social security administration or its successor program.

12 3. "Employee" means any person who performs employment services for an
13 employer pursuant to an employment relationship between the employee and
14 employer.

15 4. "Employer" means any individual or type of organization that
16 transacts business in this state, that has a license issued by an agency in
17 this state and that ~~employs~~ HIRE one or more individuals who perform
18 employment services in this state. Employer includes this state, any
19 political subdivision of this state and self-employed persons.

20 5. "Intentionally" has the same meaning prescribed in section 13-105.

21 6. "Knowingly ~~employ~~ HIRE an unauthorized alien" means the actions
22 described in 8 United States Code section 1324a. This term shall be
23 interpreted consistently with 8 United States Code section 1324a and any
24 applicable federal rules and regulations.

25 7. "License":

26 (a) Means any agency permit, certificate, approval, registration,
27 charter or similar form of authorization that is required by law and that is
28 issued by any agency for the purposes of operating a business in this state.

29 (b) Includes:

30 (i) Articles of incorporation under title 10.

31 (ii) A certificate of partnership, a partnership registration or
32 articles of organization under title 29.

33 (iii) A grant of authority issued under title 10, chapter 15.

34 (iv) Any transaction privilege tax license.

35 (c) Does not include:

36 (i) Any license issued pursuant to title 45 or 49 or rules adopted
37 pursuant to those titles.

38 (ii) Any professional license.

39 8. "Unauthorized alien" means an alien who does not have the legal
40 right or authorization under federal law to work in the United States as
41 described in 8 United States Code section 1324a(h)(3).

1 Sec. 2. Section 23-212, Arizona Revised Statutes, is amended to read:
2 23-212. Hiring of unauthorized aliens; prohibition; false and
3 frivolous complaints; violation; classification;
4 license suspension and revocation; affirmative
5 defense
6 A. An employer shall not intentionally ~~employ~~ HIRE an unauthorized
7 alien or knowingly ~~employ~~ HIRE an unauthorized alien.
8 B. On receipt of a complaint that an employer allegedly intentionally
9 ~~employs~~ HIRES an unauthorized alien or knowingly ~~employs~~ HIRES an
10 unauthorized alien, the attorney general or county attorney shall investigate
11 whether the employer has violated subsection A. When investigating a
12 complaint, the attorney general or county attorney shall verify the work
13 authorization of the alleged unauthorized alien with the federal government
14 pursuant to 8 United States Code section 1373(c). A state, county or local
15 official shall not attempt to independently make a final determination on
16 whether an alien is authorized to work in the United States. An alien's
17 immigration status or work authorization status shall be verified with the
18 federal government pursuant to 8 United States Code section 1373(c). A
19 person who knowingly files a false and frivolous complaint under this
20 subsection is guilty of a class 3 misdemeanor.
21 C. If, after an investigation, the attorney general or county attorney
22 determines that the complaint is not frivolous:
23 1. The attorney general or county attorney shall notify the United
24 States immigration and customs enforcement of the unauthorized alien.
25 2. The attorney general or county attorney shall notify the local law
26 enforcement agency of the unauthorized alien.
27 3. The attorney general shall notify the appropriate county attorney
28 to bring an action pursuant to subsection D if the complaint was originally
29 filed with the attorney general.
30 D. An action for a violation of subsection A shall be brought against
31 the employer by the county attorney in the county where the unauthorized
32 alien employee ~~is employed~~ WAS HIRED. The county attorney shall not bring an
33 action against any employer for any violation of subsection A that occurs
34 before January 1, 2008. A second violation of this section shall be based
35 only on an unauthorized alien who is ~~employed~~ HIRED by the employer after an
36 action has been brought for a violation of subsection A.
37 E. For any action in superior court under this section, the court
38 shall expedite the action, including assigning the hearing at the earliest
39 practicable date.
40 F. On a finding of a violation of subsection A:
41 1. For a first violation during a three year period that is a knowing
42 violation of subsection A, the court:
43 (a) Shall order the employer to terminate the employment of all
44 unauthorized aliens.

1 (b) Shall order the employer to be subject to a three year
2 probationary period. During the probationary period the employer shall file
3 quarterly reports with the county attorney of each new employee who is hired
4 by the employer at the specific location where the unauthorized alien
5 performed work.

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

31 (d) May order the appropriate agencies to suspend all licenses
32 described in subdivision (c) of this paragraph that are held by the employer
33 for not to exceed ten business days. The court shall base its decision to
34 suspend under this subdivision on any evidence or information submitted to it
35 during the action for a violation of this subsection and shall consider the
36 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 any
41 applicable requirements.
- 42 (v) The duration of the violation.
- 43 (vi) The role of the directors, officers or principals of the employer
44 in the violation.
- 45 (vii) Any other factors the court deems appropriate.

1 2. For a first violation during a five year period that is an
2 intentional violation of subsection A, the court shall:

3 (a) Order the employer to terminate the employment of all unauthorized
4 aliens.

5 (b) Order the employer to be subject to a five year probationary
6 period. During the probationary period the employer shall file quarterly
7 reports with the county attorney of each new employee who is hired by the
8 employer at the specific location where the unauthorized alien performed
9 work.

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

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

17 (ii) Any prior misconduct by the employer.

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

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

21 (v) The duration of the violation.

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

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

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

44 3. For a second violation of subsection A during the period of
45 probation, the court shall order the appropriate agencies to permanently

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

10 G. The attorney general shall maintain copies of court orders that are
11 received pursuant to subsection F and shall maintain a database of the
12 employers who have a first violation of subsection A and make the court
13 orders available on the attorney general's website.

14 H. On determining whether an employee is an unauthorized alien, the
15 court shall consider only the federal government's determination pursuant to
16 8 United States Code section 1373(c). The federal government's determination
17 creates a rebuttable presumption of the employee's lawful status. The court
18 may take judicial notice of the federal government's determination and may
19 request the federal government to provide automated or testimonial
20 verification pursuant to 8 United States Code section 1373(c).

21 I. For the purposes of this section, proof of verifying the employment
22 authorization of an employee through the basic pilot program creates a
23 rebuttable presumption that an employer did not intentionally ~~employ~~ HIRE an
24 unauthorized alien or knowingly ~~employ~~ HIRE an unauthorized alien.

25 J. For the purposes of this section, an employer who establishes that
26 it has complied in good faith with the requirements of 8 United States Code
27 section 1324b establishes an affirmative defense that the employer did not
28 intentionally or knowingly ~~employ~~ HIRE an unauthorized alien.