

REFERENCE TITLE: unlawful employment practices; penalties

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

## **HB 2386**

Introduced by  
Representatives Konopnicki: Adams, Crandall, Hershberger, Tobin

AN ACT

AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2;  
RELATING TO UNLAWFUL EMPLOYMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 ARTICLE 2. UNLAWFUL EMPLOYMENT PRACTICES

5 23-211. Unlawful employment practices: civil penalty:  
6 classification: definitions

7 A. ALL EMPLOYERS IN THIS STATE SHALL COMPLY WITH THE EMPLOYMENT  
8 SECURITY LAWS PRESCRIBED IN CHAPTER 4 OF THIS TITLE, THE WORKERS'  
9 COMPENSATION LAWS PRESCRIBED IN CHAPTER 6 OF THIS TITLE AND THE INCOME TAX  
10 WITHHOLDING LAWS PRESCRIBED IN TITLE 43, CHAPTER 4. THIS SUBSECTION APPLIES  
11 TO ALL EMPLOYERS WHETHER THE EMPLOYER PAYS THE EMPLOYEES BY CASH, CHECK OR  
12 AUTOMATIC DEPOSIT.

13 B. ALL EMPLOYERS IN THIS STATE SHALL COMPLETE AND RETAIN I-9  
14 EMPLOYMENT ELIGIBILITY VERIFICATION FORMS FOR ALL EMPLOYEES AS PRESCRIBED BY  
15 FEDERAL LAW. IF THE ATTORNEY GENERAL DETERMINES THAT AN EMPLOYER HAS FAILED  
16 TO COMPLETE AND RETAIN I-9 EMPLOYMENT ELIGIBILITY VERIFICATION FORMS AS  
17 PRESCRIBED BY FEDERAL LAW, THE ATTORNEY GENERAL SHALL NOTIFY THE UNITED  
18 STATES CITIZENSHIP AND IMMIGRATION SERVICES.

19 C. THE ATTORNEY GENERAL SHALL COORDINATE WITH THE DEPARTMENT OF  
20 ECONOMIC SECURITY, THE INDUSTRIAL COMMISSION AND THE DEPARTMENT OF REVENUE TO  
21 INVESTIGATE EMPLOYERS IN THIS STATE THAT PAY EMPLOYEES BY CASH AND THAT FAIL  
22 TO COMPLY WITH SUBSECTION A.

23 D. IF THE ATTORNEY GENERAL DETERMINES SUFFICIENT EVIDENCE EXISTS THAT  
24 AN EMPLOYER PAYS EMPLOYEES BY CASH AND HAS KNOWINGLY AND INTENTIONALLY FAILED  
25 TO COMPLY WITH SUBSECTION A, THE FOLLOWING APPLIES FOR A FIRST VIOLATION OF  
26 THIS SECTION DURING A ONE YEAR PERIOD:

27 1. THE ATTORNEY GENERAL SHALL MAIL A WRITTEN NOTICE TO THE EMPLOYER BY  
28 CERTIFIED MAIL DESCRIBING THE VIOLATION.

29 2. WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE UNDER PARAGRAPH 1 OF  
30 THIS SUBSECTION, THE EMPLOYER MAY CONTEST THE ATTORNEY GENERAL'S  
31 DETERMINATION BY NOTIFYING THE ATTORNEY GENERAL. AFTER THE EMPLOYER NOTIFIES  
32 THE ATTORNEY GENERAL THAT THE EMPLOYER IS CONTESTING THE ATTORNEY GENERAL'S  
33 DETERMINATION, THE EMPLOYER SHALL PROVIDE SUPPORTING EVIDENCE TO THE ATTORNEY  
34 GENERAL THAT THE EMPLOYER DID NOT VIOLATE SUBSECTION A. THE ATTORNEY GENERAL  
35 SHALL ALLOW A REASONABLE AMOUNT OF TIME UNDER THIS SUBSECTION FOR THE  
36 EMPLOYEE TO OBTAIN COPIES OF SUPPORTING INFORMATION AND DOCUMENTS FROM  
37 FEDERAL AND STATE AGENCIES.

38 3. AFTER RECEIVING SUPPORTING EVIDENCE UNDER PARAGRAPH 2 OF THIS  
39 SUBSECTION, THE ATTORNEY GENERAL SHALL EVALUATE THE EVIDENCE AND SHALL ISSUE  
40 A FINAL DETERMINATION THAT EITHER AFFIRMS THE ORIGINAL DETERMINATION OR  
41 DISMISSES THE ORIGINAL DETERMINATION. THE ATTORNEY GENERAL SHALL MAIL THE  
42 FINAL DETERMINATION BY CERTIFIED MAIL TO THE EMPLOYER.

1           4. IF AN EMPLOYER DOES NOT CONTEST THE ATTORNEY GENERAL'S  
2 DETERMINATION UNDER PARAGRAPH 2 OF THIS SUBSECTION OR THE EMPLOYER RECEIVES A  
3 FINAL DETERMINATION UNDER PARAGRAPH 3 OF THIS SUBSECTION THAT AFFIRMS THE  
4 VIOLATION, THE EMPLOYER IS SUBJECT TO A CIVIL PENALTY OF \_\_\_\_\_ DOLLARS.

5           E. A SECOND VIOLATION OF THIS SECTION DURING A ONE YEAR PERIOD IS A  
6 CLASS 3 MISDEMEANOR. AN EMPLOYER IS NOT SUBJECT TO PROSECUTION FOR A SECOND  
7 VIOLATION UNLESS THE PROCESS DESCRIBED UNDER SUBSECTION D IS TOTALLY  
8 COMPLETED. ON CONVICTION OF A SECOND VIOLATION OF THIS SECTION, THE COURT  
9 MAY ORDER THAT THE EMPLOYER'S LICENSE BE SUSPENDED. IF THE COURT SUSPENDS A  
10 LICENSE PURSUANT TO THIS SUBSECTION, THE COURT SHALL NOTIFY THE APPROPRIATE  
11 AGENCY AND THE APPROPRIATE AGENCY SHALL IMMEDIATELY SUSPEND THE EMPLOYER'S  
12 LICENSE.

13           F. A THIRD VIOLATION OF THIS SECTION DURING A ONE YEAR PERIOD IS A  
14 CLASS 6 FELONY. ON CONVICTION OF A THIRD VIOLATION OF THIS SECTION, THE  
15 COURT MAY ORDER THAT THE EMPLOYER'S LICENSE BE SUSPENDED OR REVOKED. IF THE  
16 COURT SUSPENDS OR REVOKES A LICENSE PURSUANT TO THIS SUBSECTION, THE COURT  
17 SHALL NOTIFY THE APPROPRIATE AGENCY AND THE APPROPRIATE AGENCY SHALL  
18 IMMEDIATELY SUSPEND OR REVOKE THE EMPLOYER'S LICENSE.

19           G. FOR THE PURPOSES OF THIS SECTION:

20           1. "KNOWINGLY AND INTENTIONALLY" MEANS THAT A RESPONSIBLE MANAGEMENT  
21 AGENT OF THE EMPLOYER HAD THE INTENT TO VIOLATE THE EMPLOYMENT SECURITY LAWS  
22 PRESCRIBED IN CHAPTER 4 OF THIS TITLE, THE WORKERS' COMPENSATION LAWS  
23 PRESCRIBED IN CHAPTER 6 OF THIS TITLE AND THE INCOME TAX WITHHOLDING LAWS  
24 PRESCRIBED IN TITLE 43, CHAPTER 4 AND HAD THE KNOWLEDGE THAT THE EMPLOYER'S  
25 EMPLOYMENT PRACTICES VIOLATED STATE LAW.

26           2. "LICENSE" MEANS THE WHOLE OR A PART OF ANY AGENCY PERMIT,  
27 CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR FORM OF PERMISSION  
28 THAT IS REQUIRED BY LAW FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS  
29 STATE.