

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

HOUSE BILL 2779

AN ACT

AMENDING SECTION 13-2009, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; MAKING APPROPRIATIONS; RELATING TO EMPLOYMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-2009, Arizona Revised Statutes, is amended to
3 read:

4 13-2009. Aggravated taking identity of another person or
5 entity: classification

6 A. A person commits aggravated taking the identity of another person
7 or entity if the person knowingly takes, purchases, manufactures, records,
8 possesses or uses any personal identifying information or entity identifying
9 information of either:

10 1. ~~Five~~ THREE or more other persons or entities, including real or
11 fictitious persons or entities, without the consent of the other persons or
12 entities, with the intent to obtain or use the other persons' or entities'
13 identities for any unlawful purpose or to cause loss to the persons or
14 entities whether or not the persons or entities actually suffer any economic
15 loss.

16 2. Another person or entity, including a real or fictitious person or
17 entity, without the consent of that other person or entity, with the intent
18 to obtain or use the other person's or entity's identity for any unlawful
19 purpose and causes another person or entity to suffer an economic loss of
20 three thousand dollars or more.

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

23 B. In an action for aggravated taking the identity of another person
24 or entity under subsection A, paragraph 1 of this section, proof of
25 possession out of the regular course of business of the personal identifying
26 information or entity identifying information of ~~five~~ THREE or more other
27 persons or entities may give rise to an inference that the personal
28 identifying information or entity identifying information of the ~~five~~ THREE
29 or more other persons or entities was possessed for an unlawful purpose.

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

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

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

36 ARTICLE 2. EMPLOYMENT OF UNAUTHORIZED ALIENS

37 23-211. Definitions

38 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

1 3. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS EMPLOYMENT SERVICES FOR AN
2 EMPLOYER PURSUANT TO AN EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEE AND
3 EMPLOYER.

4 4. "EMPLOYER" MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT
5 TRANSACTS BUSINESS IN THIS STATE, THAT HAS A LICENSE ISSUED BY AN AGENCY IN
6 THIS STATE AND THAT EMPLOYS ONE OR MORE INDIVIDUALS WHO PERFORM EMPLOYMENT
7 SERVICES IN THIS STATE. EMPLOYER INCLUDES THIS STATE, ANY POLITICAL
8 SUBDIVISION OF THIS STATE AND SELF-EMPLOYED PERSONS.

9 5. "KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN" MEANS THE ACTIONS
10 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a. THIS TERM SHALL BE
11 INTERPRETED CONSISTENTLY WITH 8 UNITED STATES CODE SECTION 1324a AND ANY
12 APPLICABLE FEDERAL RULES AND REGULATIONS.

13 6. "LICENSE":

14 (a) MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL, REGISTRATION,
15 CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY LAW AND THAT IS
16 ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

17 (b) INCLUDES:

18 (i) ARTICLES OF INCORPORATION UNDER TITLE 10.

19 (ii) A CERTIFICATE OF PARTNERSHIP, A PARTNERSHIP REGISTRATION OR
20 ARTICLES OF ORGANIZATION UNDER TITLE 29.

21 (iii) A GRANT OF AUTHORITY ISSUED UNDER TITLE 10, CHAPTER 15.

22 (iv) ANY TRANSACTION PRIVILEGE TAX LICENSE.

23 (c) DOES NOT INCLUDE:

24 (i) ANY LICENSE ISSUED PURSUANT TO TITLE 45 OR 49.

25 (ii) ANY PROFESSIONAL LICENSE.

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

29 23-212. Employment of unauthorized aliens; prohibition; false
30 and frivolous complaints; violation; classification;
31 license suspension and revocation

32 A. AN EMPLOYER SHALL NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

33 B. ON RECEIPT OF A COMPLAINT THAT AN EMPLOYER ALLEGEDLY KNOWINGLY
34 EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL
35 INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A. WHEN
36 INVESTIGATING A COMPLAINT, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL
37 VERIFY THE WORK AUTHORIZATION OF THE ALLEGED UNAUTHORIZED ALIEN WITH THE
38 FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A
39 PERSON WHO KNOWINGLY FILES A FALSE AND FRIVOLOUS COMPLAINT UNDER THIS
40 SUBSECTION IS GUILTY OF A CLASS 3 MISDEMEANOR.

41 C. IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY ATTORNEY
42 DETERMINES THAT THE COMPLAINT IS NOT FRIVOLOUS:

43 1. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE UNITED
44 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OF THE UNAUTHORIZED ALIEN.

1 2. THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL NOTIFY THE LOCAL LAW
2 ENFORCEMENT AGENCY OF THE UNAUTHORIZED ALIEN.

3 3. THE ATTORNEY GENERAL SHALL NOTIFY THE APPROPRIATE COUNTY ATTORNEY
4 TO BRING AN ACTION PURSUANT TO SUBSECTION D IF THE COMPLAINT WAS ORIGINALLY
5 FILED WITH THE ATTORNEY GENERAL.

6 D. AN ACTION FOR A VIOLATION OF SUBSECTION A SHALL BE BROUGHT AGAINST
7 THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE UNAUTHORIZED
8 ALIEN EMPLOYEE IS EMPLOYED. THE COUNTY ATTORNEY SHALL NOT BRING AN ACTION
9 AGAINST ANY EMPLOYER FOR ANY VIOLATION OF SUBSECTION A THAT OCCURS BEFORE
10 MARCH 1, 2008.

11 E. FOR ANY ACTION IN SUPERIOR COURT UNDER THIS SECTION, THE COURT
12 SHALL EXPEDITE THE ACTION, INCLUDING ASSIGNING THE HEARING AT THE EARLIEST
13 PRACTICABLE DATE.

14 F. ON A FINDING OF A VIOLATION OF SUBSECTION A:

15 1. FOR A FIRST VIOLATION, THE COURT SHALL:

16 (a) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED
17 ALIENS.

18 (b) ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES, SUBJECT TO
19 THIS SUBDIVISION, THAT ARE HELD BY THE EMPLOYER IF THE EMPLOYER FAILS TO FILE
20 A SIGNED SWORN AFFIDAVIT WITH THE APPROPRIATE AGENCIES WITHIN THREE BUSINESS
21 DAYS AFTER THE ORDER IS ISSUED. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER
22 HAS TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT THE
23 EMPLOYER WILL NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN. ALL LICENSES THAT
24 ARE SUSPENDED UNDER THIS SUBDIVISION SHALL REMAIN SUSPENDED UNTIL THE
25 EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH THE APPROPRIATE AGENCIES. FOR
26 THE PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT ARE SUBJECT TO SUSPENSION
27 UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND
28 THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S
29 BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE
30 IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION
31 WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO
32 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE SUBJECT TO
33 SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE
34 EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE
35 COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES
36 SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S ORDER. THE COURT SHALL
37 SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY GENERAL AND THE ATTORNEY
38 GENERAL SHALL MAINTAIN THE COPY PURSUANT TO SUBSECTION G.

39 2. FOR A SECOND VIOLATION, THE COURT SHALL ORDER THE APPROPRIATE
40 AGENCIES TO PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND
41 THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S
42 BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE
43 IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION
44 WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO
45 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE COURT SHALL ORDER THE

1 APPROPRIATE AGENCIES TO PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE
2 EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE
3 ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL
4 IMMEDIATELY REVOKE THE LICENSES.

5 G. THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF COURT ORDERS THAT ARE
6 RECEIVED PURSUANT TO SUBSECTION F, PARAGRAPH 1 AND SHALL MAINTAIN A DATABASE
7 OF THE EMPLOYERS WHO HAVE A FIRST VIOLATION OF SUBSECTION A AND MAKE THE
8 COURT ORDERS AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE.

9 H. ON DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED ALIEN, THE
10 COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S DETERMINATION PURSUANT TO
11 8 UNITED STATES CODE SECTION 1373(c). THE FEDERAL GOVERNMENT'S DETERMINATION
12 CREATES A REBUTTABLE PRESUMPTION OF THE EMPLOYEE'S LAWFUL STATUS. THE COURT
13 MAY TAKE JUDICIAL NOTICE OF THE FEDERAL GOVERNMENT'S DETERMINATION AND MAY
14 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR TESTIMONIAL
15 VERIFICATION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

16 I. FOR THE PURPOSES OF THIS SECTION, PROOF OF VERIFYING THE EMPLOYMENT
17 AUTHORIZATION OF AN EMPLOYEE THROUGH THE BASIC PILOT PROGRAM CREATES A
18 REBUTTABLE PRESUMPTION THAT AN EMPLOYER DID NOT KNOWINGLY EMPLOY AN
19 UNAUTHORIZED ALIEN.

20 23-213. Employer actions; federal or state law compliance

21 THIS ARTICLE SHALL NOT BE CONSTRUED TO REQUIRE AN EMPLOYER TO TAKE ANY
22 ACTION THAT THE EMPLOYER BELIEVES IN GOOD FAITH WOULD VIOLATE FEDERAL OR
23 STATE LAW.

24 23-214. Verification of employment eligibility; basic pilot
25 program

26 AFTER MARCH 1, 2008, EVERY EMPLOYER, AFTER HIRING AN EMPLOYEE, SHALL
27 VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE BASIC PILOT
28 PROGRAM.

29 Sec. 3. Employer notice

30 On or before October 1, 2007, the department of economic security shall
31 provide a notice to every employer in the database that is maintained
32 pursuant to section 23-722.01, Arizona Revised Statutes. The notice shall
33 explain the requirements of title 23, chapter 2, article 2, Arizona Revised
34 Statutes, as added by this act, including the following:

35 1. A new state law prohibits employers from knowingly employing an
36 unauthorized alien.

37 2. For a first violation of this new state law, the court will order
38 the appropriate licensing agencies to suspend all licenses held by the
39 employer unless the employer files a signed sworn affidavit with the
40 appropriate agencies within three business days. The filed affidavit must
41 state that the employer has terminated the employment of all unauthorized
42 aliens and that the employer will not knowingly employ an unauthorized alien.
43 A license that is suspended will remain suspended until the employer files a
44 signed sworn affidavit with the appropriate agencies. A copy of the court
45 order will be made available on the attorney general's website.

1 3. For a second violation of this new state law, the court will order
2 the appropriate licensing agencies to permanently revoke all licenses that
3 are held by the employer.

4 4. Proof of verifying the employment authorization of an employee
5 through the basic pilot program, as defined in section 23-211, Arizona
6 Revised Statutes, as added by this act, will create a rebuttable presumption
7 that an employer did not violate the new state law.

8 5. After March 1, 2008, every employer, after hiring an employee, is
9 required to verify the employment eligibility of the employee through the
10 basic pilot program, as defined in section 23-211, Arizona Revised Statutes,
11 as added by this act.

12 6. Instructions for the employer on how to enroll in the basic pilot
13 program, as defined in section 23-211, Arizona Revised Statutes, as added by
14 this act.

15 Sec. 4. Severability

16 If any provision of this act or its application to any person or
17 circumstance is held invalid, the invalidity does not affect other provisions
18 or applications of this act that can be given effect without the invalid
19 provision or application, and to this end the provisions of this act are
20 severable.

21 Sec. 5. Short title

22 This act shall be known as and may be cited as the "Legal Arizona
23 Workers Act."

24 Sec. 6. Appropriation; attorney general enforcement; exemption

25 A. The sum of \$100,000 is appropriated from the state general fund in
26 fiscal year 2007-2008 to the attorney general for the purpose of enforcing
27 any immigration related matters and section 23-212, Arizona Revised Statutes,
28 as added by this act.

29 B. The appropriation made in subsection A of this section is exempt
30 from the provisions of section 35-190, Arizona Revised Statutes, relating to
31 lapsing of appropriations.

32 Sec. 7. Appropriation; county attorney enforcement; exemption

33 A. The sum of \$2,500,000 is appropriated from the state general fund
34 in fiscal year 2007-2008 to the department of administration to be
35 distributed to the county attorneys in this state for the purpose of
36 enforcing any immigration related matters and section 23-212, Arizona Revised
37 Statutes, as added by this act. The department of administration shall
38 distribute these monies to each county attorney as follows:

39 1. \$1,500,000 to each county attorney of a county in this state having
40 a population of one million five hundred thousand or more persons.

41 2. \$500,000 to each county attorney of a county in this state having a
42 population of eight hundred thousand or more persons but less than one
43 million five hundred thousand persons.

1 3. The remainder of monies to be distributed as equally as possible to
2 each county attorney of counties in this state having a population of less
3 than five hundred thousand persons.

4 B. The appropriation made in subsection A of this section is exempt
5 from the provisions of section 35-190, Arizona Revised Statutes, relating to
6 lapsing of appropriations.