CH.279

STATE OF ARIZONA

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GOVERNOR

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July 2, 2007

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Re: House Bill 2779: fair and legal employment

Dear Speaker Weiers:

Today I signed House Bill 2779, the Legal Arizona Workers Act.

With my signature on this bill, Arizona has taken the most aggressive action in the country against employers who knowingly or intentionally hire undocumented workers. Unlike House Bill 2577 from last session, which I vetoed because it offered employer amnesty and indemnification, this bill imposes tough consequences on those who knowingly employ undocumented workers.

Immigration is a federal responsibility, but I signed House Bill 2779 because it is now abundantly clear that Congress finds itself incapable of coping with the comprehensive immigration reforms our country needs. I signed it, too, out of the realization that the flow of illegal immigration into our state is due to the constant demand of some employers for cheap, undocumented labor.

In our desire to stop illegal immigration, however, we must not overlook some drafting problems and omissions in House Bill 2779. We must not harm legitimate Arizona employers and employees as we seek to curb illegal employment practices. The problems in House Bill 2779 include the following:

- The bill lacks an antidiscrimination clause to ensure that it is enforced in a fair and non-discriminatory manner. Federal and state law preclude employment discrimination against Arizonans on the basis of race or national origin and this bill can and must be enforced in a way to ensure that no lawful worker faces discrimination on these bases. Indeed, even in the absence of a legislative fix on this issue, I will call upon my Office of Equal Employment Opportunity and the Attorney General's Civil Rights Division to actively promote efforts to educate

employers on how to implement this bill fairly and to aggressively prosecute cases of discrimination that may arise.

- Unlike earlier draft amendments, the final version of House Bill 2779 omits the license revocation exception for businesses servicing critical infrastructure. Despite our compelling interest in ensuring fair and legal employment, it is not in the state's best interest to close hospitals, power plants and other similarly critical businesses because of wrongful employment decisions. Other sanctions should be explored.

- The bill's license revocation provisions are also overly broad to the extent that they are susceptible to an interpretation requiring the closure of multiple locations or franchises of a business based solely on the wrongful hiring practices of one location. The legislature should preclude such a result.

- This bill provides woefully inadequate funding for the law enforcement agencies charged with enforcing it. The Attorney General's Office in particular is underfunded by the bill. The $100,000 appropriated to that office will be inadequate for it to meet its obligations of both developing the extensive database required and investigating complaints. More funding is needed for those purposes as well as to ensure that the Civil Rights Division has sufficient resources to guarantee that the law is enforced in a non-discriminatory manner. The $70,000 appropriated for employer notification is also inadequate.

- Finally, I note that House Bill 2779 contains an important typographical error that must be corrected. On page 6, line 14, the bill cites 8 U.S.C. § 1324b for the purposes of establishing a rebuttable persumption for employers who comply with federal employment verification procedures. The correct cite should be to 8 U.S.C. § 1324a (b).

Because of these infirmities, and because many employers have told me either that they did not have sufficient time to let the legislature know of their concerns with the ***final*** version of House Bill 2779 or that their concerns were not given thorough consideration, I am willing to call the legislature into special session this fall to enable it to fix this bill before its January 1, 2008 effective date. As Representative Pearce and Senator Burns acknowledged in a June 28, 2007 letter to me "Notwithstanding all our efforts, we understand that no bill is perfect and changes may be needed as the bill is implemented. For that reason, we believe that dealing with this issue through the legislative process is preferable to the initiative process." I agree, but I believe some changes to this bill are needed even before it becomes effective. The date of the special session will be determined after I have had the opportunity to consult legislative leadership. The special session will be aimed at clarifications, omissions, and corrections, ***not*** at undercutting the underlying strength of House Bill 2779.

Because of Congress' failure to act, states like Arizona have no choice but to take strong action to discourage the further flow of illegal immigration through our borders. I renew my call to Congress to enact comprehensive immigration reform legislation. Now that Arizona has acted, other states are likely to follow. For our country to have a uniform and uniformly enforced immigration law, the United States Congress must act swiftly and definitively to solve this problem at the national level.

Yours very truly,

Janet Napolitano
Governor

JN:TAN/jm

cc: The Honorable Timothy Bee
The Honorable Russell K. Pearce

Conference Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

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

CHAPTER 279

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)

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

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

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

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

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

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

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

B. In an action for aggravated taking the identity of another person or entity under subsection A, paragraph 1 of this section, proof of possession out of the regular course of business of the personal identifying information or entity identifying information of ~~five~~ THREE or more other persons or entities may give rise to an inference that the personal identifying information or entity identifying information of the ~~five~~ THREE 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. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS EMPLOYMENT SERVICES FOR AN EMPLOYER PURSUANT TO AN EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEE AND EMPLOYER.

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

5. "INTENTIONALLY" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-105.

6. "KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN" MEANS THE ACTIONS DESCRIBED IN 8 UNITED STATES CODE SECTION 1324A. THIS TERM SHALL BE INTERPRETED CONSISTENTLY WITH 8 UNITED STATES CODE SECTION 1324A AND ANY APPLICABLE FEDERAL RULES AND REGULATIONS.

7. "LICENSE":

(a) 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.

(b) INCLUDES:

(i) ARTICLES OF INCORPORATION UNDER TITLE 10.

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

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

(iv) ANY TRANSACTION PRIVILEGE TAX LICENSE.

(c) DOES NOT INCLUDE:

(i) ANY LICENSE ISSUED PURSUANT TO TITLE 45 OR 49 OR RULES ADOPTED PURSUANT TO THOSE TITLES.

(ii) ANY PROFESSIONAL LICENSE.

8. "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. <u>Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation</u>

A. AN EMPLOYER SHALL NOT INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

B. ON RECEIPT OF A COMPLAINT THAT AN EMPLOYER ALLEGEDLY INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN OR KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL INVESTIGATE WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION A. WHEN INVESTIGATING A COMPLAINT, THE ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF THE ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A STATE, COUNTY OR LOCAL OFFICIAL SHALL NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL DETERMINATION ON WHETHER AN ALIEN IS AUTHORIZED TO WORK IN THE UNITED STATES. AN ALIEN'S IMMIGRATION STATUS OR WORK

AUTHORIZATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A PERSON WHO KNOWINGLY FILES A FALSE AND FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION IS GUILTY OF A CLASS 3 MISDEMEANOR.

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

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

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

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

D. AN ACTION FOR A VIOLATION OF SUBSECTION A SHALL BE BROUGHT AGAINST THE EMPLOYER BY THE COUNTY ATTORNEY IN THE COUNTY WHERE THE UNAUTHORIZED ALIEN EMPLOYEE IS EMPLOYED. THE COUNTY ATTORNEY SHALL NOT BRING AN ACTION AGAINST ANY EMPLOYER FOR ANY VIOLATION OF SUBSECTION A THAT OCCURS BEFORE JANUARY 1, 2008. A SECOND VIOLATION OF THIS SECTION SHALL BE BASED ONLY ON AN UNAUTHORIZED ALIEN WHO IS EMPLOYED BY THE EMPLOYER AFTER AN ACTION HAS BEEN BROUGHT FOR A VIOLATION OF SUBSECTION A.

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

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

1. FOR A FIRST VIOLATION DURING A THREE YEAR PERIOD THAT IS A KNOWING VIOLATION OF SUBSECTION A, THE COURT:

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

(b) SHALL ORDER THE EMPLOYER TO BE SUBJECT TO A THREE YEAR PROBATIONARY PERIOD. DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE QUARTERLY REPORTS WITH THE COUNTY ATTORNEY OF EACH NEW EMPLOYEE WHO IS HIRED BY THE EMPLOYER AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK.

(c) SHALL ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN. THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES SUBJECT TO THIS SUBDIVISION THAT ARE HELD BY THE EMPLOYER IF THE EMPLOYER FAILS TO FILE A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED. ALL LICENSES THAT ARE SUSPENDED UNDER THIS SUBDIVISION SHALL REMAIN SUSPENDED UNTIL THE EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY. NOTWITHSTANDING ANY OTHER LAW, ON FILING OF THE AFFIDAVIT THE SUSPENDED

LICENSES SHALL BE REINSTATED IMMEDIATELY BY THE APPROPRIATE AGENCIES FOR THE PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S ORDER. THE COURT SHALL SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY GENERAL AND THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY PURSUANT TO SUBSECTION G.

(d) MAY ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES DESCRIBED IN SUBDIVISION (c) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER FOR NOT TO EXCEED TEN BUSINESS DAYS. THE COURT SHALL BASE ITS DECISION TO SUSPEND UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO IT DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER THE FOLLOWING FACTORS, IF RELEVANT:

(i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.

(ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.

(iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.

(iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY APPLICABLE REQUIREMENTS.

(v) THE DURATION OF THE VIOLATION.

(vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER IN THE VIOLATION.

(vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

2. FOR A FIRST VIOLATION DURING A FIVE YEAR PERIOD THAT IS AN INTENTIONAL VIOLATION OF SUBSECTION A, THE COURT SHALL:

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

(b) ORDER THE EMPLOYER TO BE SUBJECT TO A FIVE YEAR PROBATIONARY PERIOD. DURING THE PROBATIONARY PERIOD THE EMPLOYER SHALL FILE QUARTERLY REPORTS WITH THE COUNTY ATTORNEY OF EACH NEW EMPLOYEE WHO IS HIRED BY THE EMPLOYER AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK.

(c) ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES, DESCRIBED IN SUBDIVISION (d) OF THIS PARAGRAPH THAT ARE HELD BY THE EMPLOYER FOR A MINIMUM OF TEN DAYS. THE COURT SHALL BASE ITS DECISION ON THE LENGTH OF THE SUSPENSION UNDER THIS SUBDIVISION ON ANY EVIDENCE OR INFORMATION SUBMITTED TO IT DURING THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER THE FOLLOWING FACTORS, IF RELEVANT:

(i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.

(ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.

(iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.

(iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY APPLICABLE REQUIREMENTS.

(v) THE DURATION OF THE VIOLATION.

(vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER IN THE VIOLATION.

(vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

(d) ORDER THE EMPLOYER TO FILE A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY. THE AFFIDAVIT SHALL STATE THAT THE EMPLOYER HAS TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN. ALL LICENSES THAT ARE SUSPENDED UNDER THIS SUBDIVISION SHALL REMAIN SUSPENDED UNTIL THE EMPLOYER FILES A SIGNED SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY. FOR THE PURPOSES OF THIS SUBDIVISION, THE LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE SUBJECT TO SUSPENSION UNDER THIS SUBDIVISION ARE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE COURT'S ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL SUSPEND THE LICENSES ACCORDING TO THE COURT'S ORDER. THE COURT SHALL SEND A COPY OF THE COURT'S ORDER TO THE ATTORNEY GENERAL AND THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY PURSUANT TO SUBSECTION G.

3. FOR A SECOND VIOLATION OF SUBSECTION A DURING THE PERIOD OF PROBATION, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AND THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK. IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO PERMANENTLY REVOKE ALL LICENSES THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS. ON RECEIPT OF THE ORDER AND NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE AGENCIES SHALL IMMEDIATELY REVOKE THE LICENSES.

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

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

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

J. FOR THE PURPOSES OF THIS SECTION, AN EMPLOYER WHO ESTABLISHES THAT IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 UNITED STATES CODE SECTION 1324b ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

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

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

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

AFTER DECEMBER 31, 2007, EVERY EMPLOYER, AFTER HIRING AN EMPLOYEE, SHALL VERIFY THE EMPLOYMENT ELIGIBILITY OF THE EMPLOYEE THROUGH THE BASIC PILOT PROGRAM.

Sec. 3. Employer notice

On or before October 1, 2007, the department of revenue shall provide a notice to every employer that is required to withhold tax pursuant to title 43, chapter 4, Arizona Revised Statutes. The notice shall explain the requirements of title 23, chapter 2, article 2, Arizona Revised Statutes, as added by this act, including the following:

1. A new state law prohibits employers from intentionally employing an unauthorized alien or knowingly employing an unauthorized alien.

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

3. For a first violation of this new state law during a five year period that is an intentional violation, the court will order the appropriate

licensing agencies to suspend all licenses held by the employer for a minimum of ten days. The employer must file a signed sworn affidavit with the county attorney. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license that is suspended will remain suspended until the employer files a signed sworn affidavit with the county attorney. A copy of the court order will be made available on the attorney general's website.

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

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

6. After December 31, 2007, every employer, after hiring an employee, is required to verify the employment eligibility of the employee through the basic pilot program, as defined in section 23-211, Arizona Revised Statutes, as added by this act.

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

Sec. 4. <u>Employer sanctions legislative study committee</u>

A. The employer sanctions legislative study committee is established consisting of the following members:

1. Three members of the senate who are appointed by the president of the senate, not more than two of whom shall be members of the same political party. The president of the senate shall designate one of these members to co-chair the committee.

2. Three members of the house of representatives who are appointed by the speaker of the house of representatives, not more than two of whom shall be members of the same political party. The speaker of the house of representatives shall designate one of these members to co-chair the committee.

3. A citizen of Arizona appointed by the president of the senate who owns a business in Arizona with no more than 30 employees.

4. A citizen of Arizona appointed by the speaker of the house of representatives who owns a business in Arizona with more than 30 employees.

B. The Committee shall:

1. Examine the laws and regulations pertaining to employers sanctions in Arizona.

2. Examine the effects of these laws and whether such laws are being properly implemented.

3. Examine if these laws are being applied to all businesses in Arizona in a fair manner.

4. Examine if the complaint process is being implemented in a fair and just manner.

5. Submit a report of its findings and recommendations to the governor, the president of the senate and speaker of the house of representatives on or before December 31, 2008 and submit a copy of its report to the secretary of state and the director of the Arizona state, library archives and public records.

C. Committee members are not eligible to receive compensation or reimbursement of expenses.

Sec. 5. Severability

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

Sec. 6. Short title

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

Sec. 7. Appropriation; attorney general enforcement; exemption

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

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

Sec. 8. Appropriation; county attorney enforcement; department of revenue; employer notice; exemption

A. The sum of $2,430,000 is appropriated from the state general fund in fiscal year 2007-2008 to the department of administration to be distributed to the county attorneys in this state for the purpose of enforcing any immigration related matters and section 23-212, Arizona Revised Statutes, as added by this act. The department of administration shall distribute these monies to each county attorney as follows:

1. $1,430,000 to each county attorney of a county in this state having a population of one million five hundred thousand or more persons.

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

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

B. The sum of $70,000 is appropriated from the state general fund in fiscal year 2007-2008 to the department of revenue for the purposes prescribed in section 3 of this act.

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

Sec. 9. Delayed repeal

Section 4 as added by this act is repealed from and after January 1, 2009.

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.