Conference Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 211

HOUSE BILL 2162

AN ACT

AMENDING SECTIONS 1-501 AND 1-502, ARIZONA REVISED STATUTES; AMENDING SECTION 11-1051, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 2, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-1509, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 3, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-2928, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 5, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; AMENDING SECTION 13-2929, ARIZONA REVISED STATUTES, AS ADDED BY SENATE BILL 1070, SECTION 5, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; RELATING TO IMMIGRATION AND BORDER SECURITY; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 1-501, Arizona Revised Statutes, is amended to read:

1-501. Eligibility for federal public benefits; documentation; violation; classification; citizen suits; attorney fees; definition

A. Notwithstanding any other state law and to the extent permitted by federal law, any NATURAL person who applies for a federal public benefit that is administered by this state or a political subdivision of this state and that requires participants to be citizens of the United States, legal residents of the United States or otherwise lawfully present in the United States shall submit at least one of the following documents to the entity that administers the federal public benefit demonstrating lawful presence in the United States:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.

2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.

3. A United States certificate of birth abroad.

4. A United States passport.

5. A foreign passport with a United States visa.

6. An I-94 form with a photograph.

7. A United States citizenship and immigration services employment authorization document or refugee travel document.

8. A United States certificate of naturalization.

9. A United States certificate of citizenship.

10. A tribal certificate of Indian blood.

11. A tribal or bureau of Indian affairs affidavit of birth.

B. For the purposes of administering the Arizona health care cost containment system, documentation of citizenship and legal residence shall conform with the requirements of title XIX of the social security act.

C. To the extent permitted by federal law, an agency of this state or political subdivision of this state may allow tribal members, the elderly and persons with disabilities or incapacity of the mind or body to provide documentation as specified in section 6036 of the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu of the documentation required by this section.

D. Any person who applies for federal public benefits shall sign a sworn affidavit stating that the documents presented pursuant to subsection A OF THIS SECTION are true under penalty of perjury.

E. Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any federal public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to

direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

F. This section shall be enforced without regard to race, color, religion, sex, age, disability or national origin.

G. Any person who is a resident of this state has standing in any court of record to bring suit against any agent or agency of this state or its political subdivisions to remedy any violation of any provision of this section, including an action for mandamus. Courts shall give preference to actions brought under this section over other civil actions or proceedings pending in the court.

H. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

~~H.~~ I. For the purposes of this section, "federal public benefit" has the same meaning prescribed in 8 United States Code section 1611.

Sec. 2. Section 1-502, Arizona Revised Statutes, is amended to read:

1-502. <u>Eligibility for state or local public benefits; documentation; violation; classification; citizen suits; attorney fees; definition</u>

A. Notwithstanding any other state law and to the extent permitted by federal law, any agency of this state or a political subdivision of this state that administers any state or local public benefit shall require each NATURAL person who applies for the state or local public benefit to submit at least one of the following documents to the entity that administers the state or local public benefit demonstrating lawful presence in the United States:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.

2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.

3. A United States certificate of birth abroad.

4. A United States passport.

5. A foreign passport with a United States visa.

6. An I-94 form with a photograph.

7. A United States citizenship and immigration services employment authorization document or refugee travel document.

8. A United States certificate of naturalization.

9. A United States certificate of citizenship.

10. A tribal certificate of Indian blood.

11. A tribal or bureau of Indian affairs affidavit of birth.

B. For the purposes of administering the Arizona health care cost containment system, documentation of citizenship and legal residence shall conform with the requirements of title XIX of the social security act.

C. To the extent permitted by federal law, an agency of this state or political subdivision of this state may allow tribal members, the elderly and persons with disabilities or incapacity of the mind or body to provide documentation as specified in section 6036 of the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 81) and related federal guidance in lieu of the documentation required by this section.

D. Any person who applies for state or local public benefits shall sign a sworn affidavit stating that the documents presented pursuant to subsection A OF THIS SECTION are true under penalty of perjury.

E. Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any state or local public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

F. This section shall be enforced without regard to race, color, religion, sex, age, disability or national origin.

G. Any person who is a resident of this state has standing in any court of record to bring suit against any agent or agency of this state or its political subdivisions to remedy any violation of any provision of this section, including an action for mandamus. Courts shall give preference to actions brought under this section over other civil actions or proceedings pending in the court.

H. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

~~H.~~ I. For the purposes of this section, "state or local public benefit" has the same meaning prescribed in 8 United States Code section 1621, except that it does not include commercial or professional licenses, ~~or~~ benefits provided by the public retirement systems and plans of this state OR SERVICES WIDELY AVAILABLE TO THE GENERAL POPULATION AS A WHOLE.

Sec. 3. Section 11-1051, Arizona Revised Statutes, as added by Senate Bill 1070, section 2, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

11-1051. <u>Cooperation and assistance in enforcement of immigration laws; indemnification</u>

A. No official or agency of this state or a county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

B. For any lawful ~~contact~~ STOP, DETENTION OR ARREST made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state IN THE ENFORCEMENT OF ANY OTHER LAW

OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE where reasonable suspicion exists that the person is an alien ~~who~~ AND is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person's immigration status determined before the person is released. The person's immigration status shall be verified with the federal government pursuant to 8 United States code section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not ~~solely~~ consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid Arizona driver license.

2. A valid Arizona nonoperating identification license.

3. A valid tribal enrollment card or other form of tribal identification.

4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

C. If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or on the assessment of any monetary obligation that is imposed, the United States immigration and customs enforcement or the United States customs and border protection shall be immediately notified.

D. Notwithstanding any other law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present in the united states and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside of this state.

E. IN THE IMPLEMENTATION OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~E.~~ F. Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending,

receiving or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

1. Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state.

2. Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state.

3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by title II, chapter 7 of the federal immigration and Nationality act.

4. Pursuant to 8 United States Code section 1373 and 8 United States Code section 1644.

~~F.~~ G. This section does not implement, authorize or establish and shall not be construed to implement, authorize or establish the REAL ID act of 2005 (P.L. 109-13, division B; 119 Stat. 302), including the use of a radio frequency identification chip.

~~G.~~ H. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a policy ~~or practice~~ that limits or restricts the enforcement of federal immigration laws, INCLUDING 8 UNITED STATES CODE SECTIONS 1373 AND 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than ~~one thousand~~ FIVE HUNDRED dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

~~H.~~ I. A court shall collect the civil penalty prescribed in subsection ~~G~~ H of this section and remit the civil penalty to the state treasurer for deposit in the gang and immigration intelligence team enforcement mission fund established by section 41-1724.

~~I.~~ J. The court may award court costs and reasonable attorney fees to any person or any official or agency of this state or a county, city, town or other political subdivision of this state that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

~~J.~~ K. Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

~~K.~~ L. This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

Sec. 4. Section 13-1509, Arizona Revised Statutes, as added by Senate Bill 1070, section 3, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

13-1509. Willful failure to complete or carry an alien registration document; assessment; exception; authenticated records; classification

A. In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 United States Code section 1304(e) or 1306(a).

B. In the enforcement of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 United States Code section 1373(c).

C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

~~C.~~ D. A person who is sentenced pursuant to this section is not eligible for suspension of sentence, probation, pardon, commutation of sentence, or release from confinement on any basis except as authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or the person is eligible for release pursuant to section 41-1604.07.

~~D.~~ E. In addition to any other penalty prescribed by law, the court shall order the person to pay jail costs. ~~and an additional assessment in the following amounts:~~

~~1. At least five hundred dollars for a first violation.~~

~~2. Twice the amount specified in paragraph 1 of this subsection if the person was previously subject to an assessment pursuant to this subsection.~~

~~E. A court shall collect the assessments prescribed in subsection D of this section and remit the assessments to the department of public safety, which shall establish a special subaccount for the monies in the account established for the gang and immigration intelligence team enforcement mission appropriation. Monies in the special subaccount are subject to legislative appropriation for distribution for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration.~~

F. This section does not apply to a person who maintains authorization from the federal government to remain in the United States.

G. Any record that relates to the immigration status of a person is admissible in any court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record.

H. A violation of this section is a class 1 misdemeanor, except that THE MAXIMUM FINE IS ONE HUNDRED DOLLARS AND FOR a FIRST violation of this section ~~is:~~ THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN TWENTY DAYS IN JAIL AND FOR A SECOND OR SUBSEQUENT VIOLATION THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN THIRTY DAYS IN JAIL.

~~1. A class 3 felony if the person violates this section while in possession of any of the following:~~

~~(a) A dangerous drug as defined in section 13-3401.~~

~~(b) Precursor chemicals that are used in the manufacturing of methamphetamine in violation of section 13-3404.01.~~

~~(c) A deadly weapon or a dangerous instrument, as defined in section 13-105.~~

~~(d) Property that is used for the purpose of committing an act of terrorism as prescribed in section 13-2308.01.~~

~~2. A class 4 felony if the person either:~~

~~(a) Is convicted of a second or subsequent violation of this section.~~

~~(b) Within sixty months before the violation, has been removed from the United States pursuant to 8 United States Code section 1229a or has accepted a voluntary removal from the United States pursuant to 8 United States Code section 1229c.~~

Sec. 5. Section 13-2928, Arizona Revised Statutes, as added by Senate Bill 1070, section 5, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

13-2928. <u>Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation or employment; classification; definitions</u>

A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

C. It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.

D. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

E. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~D.~~ F. A violation of this section is a class 1 misdemeanor.

~~E.~~ G. For the purposes of this section:

1. "Solicit" means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.

2. "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).

Sec. 6. Section 13-2929, Arizona Revised Statutes, as added by Senate Bill 1070, section 5, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

13-2929. <u>Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; exception; classification</u>

A. It is unlawful for a person who is in violation of a criminal offense to:

1. Transport or move or attempt to transport or move an alien in this state, in furtherance of the illegal presence of the alien in the United States, in a means of transportation if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

2. Conceal, harbor or shield or attempt to conceal, harbor or shield an alien from detection in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

3. Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such coming to, entering or residing in this state is or will be in violation of law.

B. A means of transportation that is used in the commission of a violation of this section is subject to mandatory vehicle immobilization or impoundment pursuant to section 28-3511.

C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

D. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~C.~~ E. This section does not apply to a child protective services worker acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an ambulance attendant or an emergency medical technician and who is transporting or moving an alien in this state pursuant to title 36, chapter 21.1.

~~D.~~ F. A person who violates this section is guilty of a class 1 misdemeanor and is subject to a fine of at least one thousand dollars, except that a violation of this section that involves ten or more illegal aliens is a class 6 felony and the person is subject to a fine of at least one thousand dollars for each alien who is involved.

Sec. 7. <u>Joint border security advisory committee; membership; duties; report; delayed repeal</u>

A. The joint border security advisory committee is established consisting of the following members:

1. The president of the senate or the president's designee.

2. The speaker of the house of representatives or the speaker's designee.

3. Two members of the house of representatives who are appointed by the speaker of the house of representatives.

4. Two members of the senate who are appointed by the president of the senate.

5. Six members who are appointed by the governor.

B. Committee members are not eligible to receive compensation for committee activities but may be eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.

C. The president and the speaker of the house of representatives shall each appoint a cochairperson of the committee.

D. The commission shall meet on the call of the two cochairpersons, but no more frequently than monthly.

E. The committee may:

1. Take testimony and other evidence regarding the international border with Mexico.

2. Analyze border crossing statistics.

3. Analyze related crime statistics.

4. Make recommendations designed to increase border security.

5. Make other recommendations deemed essential by the committee.

F. The committee may use the services of legislative staff as required.

G. Beginning November 30, 2010 and each month thereafter, the commission shall submit a written report of its findings and recommendations to the speaker of the house of representatives, the president of the senate and the governor. The commission shall provide a copy of the report to the secretary of state.

H. Notwithstanding any law to the contrary, the committee may vote to go into executive session to take testimony or evidence it considers sensitive or confidential in nature, which if released could compromise the security or safety of law enforcement or military personnel or a law enforcement or national guard law enforcement support operation.

I. This section is repealed from and after December 31, 2014.

Sec. 8. Immigration legislation challenges

A. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the attorney general shall act at the direction of the governor in any challenge in a state or federal court to Laws 2010, chapter 113 and any amendments to that law.

B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the governor may direct counsel other than the attorney general to appear on behalf of this state to defend any challenge to Laws 2010, chapter 113 and any amendments to that law.

Sec. 9. Conditional enactment

Sections 11-1051, 13-1509, 13-2928 and 13-2929, Arizona Revised Statutes, as amended by this act, do not become effective unless Senate Bill 1070, forty-ninth legislature, second regular session, relating to unlawfully present aliens, becomes law.

APPROVED BY THE GOVERNOR APRIL 30, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2010.