CH.279

STATE OF ARIZONA

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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

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