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Arizona Senate Bill 1070

Arizona Revised Statutes

Erroneously Referred To As: Arizona Immigration Act

Editors Notes: Arizona Senate Bill 1070 actually revises, updates, and adds to existing Arizona Law. Below are the changes to the effected statutes, listed in the order of the section numbers that were changed. For a review of the existing Bill before or without these new law revisions we recommend you visit the Arizona State Web site.

Section 11-1051

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 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 where reasonable suspicion exists that the person is an alien who 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.

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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. 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 §1373 and 8 United States Code & §1644.

F. 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. 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 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 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.

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H. A court shall collect the civil penalty prescribed in subsection G 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 41-1724.²

I. 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. 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. 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.

13-1509. Trespassing by illegal aliens; assessment; exception; classification

A. In addition to any violation of federal law, a person is guilty of trespassing if the person is both:

1. Present on any public or private land in this state.
2. In violation of 8 United States Code §1304³ or §1306(a).⁴

B. In the enforcement of this section, the final determination of an alien's immigration status shall be determined by either:

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

² 41-1724. Gang and immigration intelligence team enforcement mission fund. The gang and immigration intelligence team enforcement mission fund is established consisting of monies deposited pursuant to section 11-1051 and monies appropriated by the legislature. The department shall administer the fund. Monies in the fund are subject to legislative appropriation and shall be used for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration.

³ 8 US Code § 1304(e): Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.

⁴ §1306(a): Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$1,000 or be imprisoned not more than six months, or both.

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2. A law enforcement officer or agency communicating with the United States immigration and customs enforcement or the United States border protection pursuant to 8 United States Code §1304(e) or §1373(c).⁵

C. A person who is sentenced pursuant to this section is not eligible for suspension or commutation of sentence or release on any basis until the sentence imposed is served.

D. 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. A violation of this section is a *class 1 misdemeanor*, except that a violation of this section is:

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 §13-3401.
 - b. Precursor chemicals that are used in the manufacturing of methamphetamine in violation of §133404.
 - c. A deadly weapon or a dangerous instrument, as defined in §13-105.
 - d. Property that is used for the purpose of committing an act of terrorism as prescribed in §13-2308.
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 §1229 (a) or has accepted a voluntary removal from the United States pursuant to 8 United States Code §1229 (c).

13-2319. Smuggling; classification; definitions

⁵ §1373(c): The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

E. Notwithstanding any other law, a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has *reasonable suspicion*⁶ to believe the person is in violation of any civil traffic law and this section.

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

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 violation of this section is a class 1 misdemeanor.

E. 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 §1324a (h)(3).⁷

13-2929. Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; classification

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 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

⁶ Emphasis added.

⁷ §1324a (h)(3): As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

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 §28-3511.⁸

C. 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.

23-212. Knowingly employing unauthorized aliens; prohibition; false & frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.⁹

K. It is an affirmative defense to a violation of subsection A of this section that the employer was entrapped. To claim entrapment, the employer must admit by the employer's testimony or other evidence the substantial elements of the violation. An employer who asserts an entrapment defense has the burden of proving the following by clear and convincing evidence:

1. The idea of committing the violation started with law enforcement officers or their agents rather than with the employer.
2. The law enforcement officers or their agents urged and induced the employer to commit the violation.
3. The employer was not predisposed to commit the violation before the law enforcement officers or their agents urged and induced the employer to commit the violation.

L. An employer does not establish entrapment if the employer was predisposed to violate subsection A of this section and the law enforcement officers or their agents

⁸ §28-3511 - 4. The person is in violation of a criminal offense and is transporting, moving, concealing, harboring or shielding or attempting to transport, move, conceal, harbor or shield an alien in this state in a vehicle 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.

⁹ 23-212 A. Is on the books already, however §K & §L are added.

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merely provided the employer with an opportunity to commit the violation. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement officers and their agents may be considered in determining if an employer has proven entrapment.

23-212.01. Intentionally employing unauthorized aliens; prohibition; false & frivolous complaints; violation; classification; license suspension & revocation; affirmative defense

A. An employer shall not intentionally employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer intentionally contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.¹⁰

K. It is an affirmative defense to a violation of subsection A of this section that the employer was entrapped. To claim entrapment, the employer must admit by the employer's testimony or other evidence the substantial elements of the violation. An employer who asserts an entrapment defense has the burden of proving the following by clear and convincing evidence:

1. The idea of committing the violation started with law enforcement officers or their agents rather than with the employer.
2. The law enforcement officers or their agents urged and induced the employer to commit the violation.
3. The employer was not predisposed to commit the violation before the law enforcement officers or their agents urged and induced the employer to commit the violation.

L. An employer does not establish entrapment if the employer was predisposed to violate subsection A of this section and the law enforcement officers or their agents merely provided the employer with an opportunity to commit the violation. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement officers and their agents may be considered in determining if an employer has proven entrapment.

23-214. Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers

- A. After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall

¹⁰ 23-212.01 A. Is on the books already, however §K & §L are added.

keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.¹¹

28-3511. Removal & immobilization or impoundment of vehicle

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while any of the following applies:¹²

4. The person is in violation of a criminal offense and is transporting, moving, concealing, harboring or shielding or attempting to transport, move, conceal, harbor or shield an alien in this state in a vehicle 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.

41-1724. Gang and immigration intelligence team enforcement mission fund

The gang and immigration intelligence team enforcement mission fund is established consisting of monies deposited pursuant to §11-1051 and monies appropriated by the legislature. The department shall administer the fund. Monies in the fund are subject to legislative appropriation and shall be used for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration.

¹¹ Underlined text was added to this section of the existing law.

¹² 28-3511 A. Is existing law. The only section and text added is §4.