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AS PASSED BY THE LEGISLATURE

ARIZONA STATE SENATE
Forty-eighth Legislature, First Regular Session

FINAL AMENDED
FACT SHEET FOR H.B. 2779

fair and legal employment act

Purpose

Prohibits intentionally or knowingly employing an unauthorized alien and establishes penalties, beginning January 1, 2008, for employers in violation. Requires all employers to use the Basic Employment Verification Pilot Program beginning January 1, 2008. Establishes an Employer Sanctions Legislative Study Committee. Expands the definition of aggravated identity theft. Makes multiple appropriations.

Background

Federal Immigration Reform and Control Act

The federal Immigration Reform and Control Act (IRCA) makes all United States (U.S.) employers responsible for verifying the identity and work authorization of all individuals, including U.S. citizens, hired after November 6, 1986. IRCA provides civil penalties for any person who knowingly hires, or recruits or refers for a fee, for employment in the U.S. an individual who is not authorized to work in the U.S. (unauthorized alien), or who knowingly continues to employ an unauthorized alien. A person or entity that establishes that it has complied in good faith with the verification requirements with respect to hiring, recruiting or referral for employment of an alien in the U.S. has established an affirmative defense that the person or entity has not violated the provisions of IRCA relating to knowingly hiring an unauthorized alien (8 U.S.C. 1324a(a)).

Employers are also required to complete Employment Eligibility Verification forms (I-9 Forms) for each employee when hired, on which the employer attests under penalty of perjury that it has verified, by examining the required documents, that the individual is not an unauthorized alien. A person or entity complies with the requirement if the document reasonably appears on its face to be genuine. I-9 Forms must be retained for three years after the date the person begins work or one year after the person's employment is terminated, whichever is later. Employers are required to make the I-9 Form available for inspection, upon request, to an officer of the Bureau of Immigration and Customs Enforcement (ICE), the Department of Labor and/or the Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices. A person who hires an individual without complying with the I-9 Form requirements is subject to a civil penalty of between \$100 and \$1,000 for each violation.

Federal Basic Employment Verification Pilot Program

The U.S. Department of Homeland Security's (U.S. DHS) United States Citizenship and Immigration Services Bureau (USCIS), together with the Social Security Administration (SSA), administers the optional Basic Employment Verification Pilot Program (Basic Pilot Program), which allows employers to confirm the employment eligibility of all newly hired employees. The Basic Pilot Program involves verification checks of SSA and U.S. DHS databases by using an automated system to verify employment authorization. The system uses Social Security numbers, alien registration numbers and I-94 numbers to perform the verification checks. As of December 2004, the Basic Pilot Program has been available free of charge to employers in all 50 states.

Employers who opt to participate in the Basic Pilot Program must register, complete a Memorandum of Understanding (MOU) and a web-based tutorial, and have access to a personal computer and the Internet. Employers are prohibited from using the system to prescreen applicants for employment or to verify the employment eligibility of current employees.

Aggravated Taking Identity of Another Person or Entity

A person commits aggravated taking the identity of another person or entity (aggravated identity theft), a class 3 felony, if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal or entity identifying information of either: a) five or more real or fictitious persons or entities, without consent, with the intent to obtain or use the identities for any unlawful purpose or to cause loss to the persons or entities; or b) another real or fictitious person or entity, without consent, with the intent to obtain or use the identity for any unlawful purpose and causes another person or entity to suffer an economic loss of \$3,000 or more (A.R.S. § 13-2009).

Penalties for Class 3 Felony	
Sentencing Range	Fines
<ul style="list-style-type: none"> • 2.5-7 years in prison. • Presumptive of 3.5 years in prison. • Probation eligible. <p>(A.R.S. § 13-702)</p>	<ul style="list-style-type: none"> • Individuals can be fined up to \$150,000 per charge before applicable surcharges as listed below (A.R.S. § 13-801). • Enterprises can be fined up to \$1,000,000 per charge before applicable surcharges as listed below (A.R.S. § 13-803).

Penalties for Class 3 Misdemeanor	
Sentencing Range	Fines
<ul style="list-style-type: none"> • Up to 30 days in jail (A.R.S. § 13-707). 	<ul style="list-style-type: none"> • Individuals can be fined up to \$500 per charge before applicable surcharges as listed below (A.R.S. § 13-802). • Enterprises can be fined up to \$2,000 per charge before applicable surcharges as listed below (A.R.S. § 13-803).

Surcharges
<ul style="list-style-type: none"> • 47% for deposit in the Criminal Justice Enhancement Fund (A.R.S. § 12-116.01). • 7% for Fill the Gap, deposited in various funds (A.R.S. § 12-116.01). • 3% for deposit in the Arizona Deoxyribonucleic Acid Identification System Fund (H.B. 2787, which is awaiting action by the Governor, increases this surcharge to 7% through 12/31/11 and 6% thereafter) (A.R.S. § 12-116.01). • 13% for deposit in the Medical Services Enhancement Fund (A.R.S. § 12-116.02). • 10% for deposit in the Clean Elections Fund (A.R.S. § 16-954). • \$10 for deposit in the Judicial Collection Enhancement Fund (A.R.S. § 12-114).

Fiscal Impact

H.B. 2779 makes the following appropriations: a) \$100,000 from the state General Fund (GF) in FY 2007-2008 to the Attorney General (AG); b) \$2,430,000 from the state GF in FY 2007-2008 to the Arizona Department of Administration (ADOA) to be distributed to the county attorneys; and c) \$70,000 from the state GF in FY 2007-2008 to the Department of Revenue (DOR). Any additional fiscal impact associated with this legislation is unknown.

Provisions

Definitions

1. Defines “agency” as any agency, department, board or commission of the state or a county, city or town that issues a license for purposes of operating a business in the state. (A.R.S. § 23-211)
2. Defines “Basic Pilot Program” as the Basic Employment Verification Pilot Program that is jointly administered by the U.S. DHS and the SSA, or its successor program. (A.R.S. § 23-211)
3. Defines “employee” as any person who performs employment services for an employer pursuant to any employment relationship between the employee and the employer. (A.R.S. § 23-211)
4. Defines “employer” as any individual or type of organization that transacts business in the state, that has a license issued by an agency in the state and that employs one or more individuals who perform employment services in the state. Employer includes the state, any political subdivision of the state and self-employed persons. (A.R.S. § 23-211)
5. Defines “intentionally” as defined in the criminal code. A.R.S. § 13-105 states that intentionally means, with respect to a result or to conduct described by a statute defining an offense, that a person’s objective is to cause that result or engage in that conduct. (A.R.S. § 23-211)
6. Defines “knowingly employ an unauthorized alien” as the actions described in federal law pertaining to unlawful employment of aliens and requires the term to be interpreted consistently with federal law and any applicable federal rules and regulations. The federal law makes it unlawful for a person or other entity to: a) hire, or to recruit or refer for a fee, for employment in the U.S. an alien knowing the alien is an unauthorized alien with respect to such employment or b) to hire for employment in the U.S. an individual without verifying the employment eligibility of the individual, or if the person or entity is an agricultural association, agricultural employer or farm labor contractor, to hire or to recruit or refer for a fee for employment in the U.S. an individual without verifying the individual’s employment eligibility. The federal law also prohibits a person or other entity from continuing to employ an alien in the U.S. knowing the alien is or has become an unauthorized alien (8 U.S.C. 1324a). (A.R.S. § 23-211)
7. Defines “license” as:
 - a) 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 the state.
 - b) includes any:
 - i) transaction privilege tax license.
 - ii) articles of incorporation.

- iii) certificate of partnership, a partnership registration or articles of organization.
- iv) grant of authority to a foreign corporation.
(A.R.S. § 23-211)

8. Stipulates that “license” does not include:
 - a) any license issued by the Department of Water Resources or the Arizona Department of Environmental Quality.
 - b) any professional license.
(A.R.S. § 23-211)
9. Defines “unauthorized alien” as an alien who does not have the legal right or authorization under federal law to work in the U.S. as described in federal law pertaining to unlawful employment of aliens. Federal law states that unauthorized alien means, with respect to the employment of an alien at a particular time, that the alien is not at that time either an alien lawfully admitted for permanent residence or authorized to be so employed by federal law pertaining to immigration and nationality or by the U.S. Attorney General (8 U.S.C. 1324a(h)(3)).
(A.R.S. § 23-211)

Aggravated Identity Theft

10. Expands the definition of aggravated identify theft to include knowingly taking, purchasing, manufacturing, recording, possessing or using any personal identifying information of another person, including a real or fictitious person, with the intent to obtain employment. (A.R.S. § 13-2009)
11. Reduces, from five to three, the number of persons or entities of which a person must knowingly take, purchase, manufacture, record, possess or use any personal or entity identifying information without consent, with the intent to obtain or use the identities for an unlawful purpose or to cause loss to the persons or entities, in order for the person to commit aggravated identity theft. (A.R.S. § 13-2009)

Employment of Unauthorized Aliens

12. Prohibits an employer from intentionally or knowingly employing an unauthorized alien. (A.R.S. § 23-212)
13. Requires the AG or county attorney, upon receiving a complaint that an employer allegedly intentionally or knowingly employs an unauthorized alien, to investigate the alleged violation.
14. Requires the AG or county attorney, for purposes of investigating a complaint, to work with the federal government to verify the work authorization of the alleged alien. Federal law requires the Immigration and Naturalization Service to 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 (8 U.S.C. 1373(c)). (A.R.S. § 23-212)
15. Prohibits a state, county or local official from attempting to independently make a final determination on whether an alien is authorized to work in the U.S. and requires the official to verify an alien's immigration or work status with the federal government. (A.R.S. § 23-212)
16. Requires the AG or county attorney, upon determining that a complaint is not frivolous, to:
 - a) notify ICE of the unauthorized alien.
 - b) notify the local law enforcement agency of the unauthorized alien.
 - c) notify the appropriate county attorney to bring an action if the complaint was originally filed with the AG. (A.R.S. § 23-212)
17. Requires an action for a violation to be brought against the employer by the county attorney in the county where the unauthorized alien is employed. (A.R.S. § 23-212)
18. Prohibits the county attorney from bringing an action against an employer for a violation that occurs before January 1, 2008. (A.R.S. § 23-212)
19. Requires a second violation to be based only on an unauthorized alien who is employed by the employer after an action has been brought for a first violation. (A.R.S. § 23-212)
20. Requires the superior court to expedite any action relating to the employment of an unauthorized alien, including assigning the hearing at the earliest practicable date. (A.R.S. § 23-212)
21. Stipulates that the court, on the finding of a first violation during a three-year period of knowingly employing an unauthorized alien:
 - a) must order the employer to terminate the employment of all unauthorized aliens.
 - b) must order the employer to be subject to a three-year probationary period during which the employer must file quarterly reports with the county attorney regarding each new employee who is hired by the employer at the location where the unauthorized alien performed work.
 - c) must order the employer to file a signed sworn affidavit with the county attorney within three business days, stating that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien.
 - d) must order the appropriate agencies to suspend all licenses that are held by the employer and that are necessary to operate the employer's business at the location where the unauthorized alien worked if the employer fails to file the affidavit with the county attorney. If a license is not necessary to operate at the location where the unauthorized alien worked, but a license is necessary to operate the employer's business in general, all licenses that are held by the employer at the employer's primary place of business are subject to suspension.
 - e) may order the appropriate agencies to suspend all licenses that are held by the employer and that are necessary to operate the employer's business at the location where the unauthorized alien worked for not more than ten business days. If a license is not necessary to operate at the location where the unauthorized alien worked, but a license is necessary to operate the employer's business in general, all licenses that are held by the employer at the employer's primary place of business are subject to suspension. (A.R.S. § 23-212)

22. Requires the court, on the finding of a first violation during a five-year period of intentionally employing an unauthorized alien, to:
 - 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 which the employer must file quarterly reports with the county attorney regarding 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 that are held by the employer and that are necessary to operate the employer's business at the location where the unauthorized alien worked for a minimum of ten days. If a license is not necessary to operate at the location where the unauthorized alien worked, but a license is necessary to operate the employer's business in general, all licenses that are held by the employer at the employer's primary place of business are subject to suspension.
 - d) order the employer to file a signed sworn affidavit with the county attorney within three business days stating 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.R.S. § 23-212)
23. Requires the court, when determining the duration of license suspension, to base its decision on any evidence or information submitted during the action for a violation, in addition to the following:
 - a) the number of unauthorized aliens employed by the employer.
 - b) any prior misconduct by the employer.
 - c) the degree of harm resulting from the violation.
 - d) whether the employer made good faith efforts to comply with any applicable requirements.
 - e) the duration of the violation.
 - f) the role of the directors, officers or principals of the employer in the violation.
 - g) any other appropriate factors.
(A.R.S. § 23-212)
24. Requires the appropriate agencies to suspend the licenses according to the court's order or to revoke the licenses immediately on receiving the court order. (A.R.S. § 23-212)
25. Requires any license that is suspended for a first violation to remain suspended until the employer files the signed sworn affidavit with the county attorney. (A.R.S. § 23-212)
26. Requires the court, on the finding of a second violation of intentionally or knowingly employing an unauthorized alien during the period of probation, to 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 location where the unauthorized alien performed work. If a license is not necessary to operate 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 must order the revocation of all licenses that are held by the employer at the employer's primary place of business. (A.R.S. § 23-212)
27. Requires the court to send a copy of the court's order for a first violation to the AG. (A.R.S. § 23-212)
28. Requires the AG to maintain copies of court orders, to make the court orders available on the AG's website and to maintain a database of the employers who have a first violation. (A.R.S. § 23-212)
29. Requires the court, when determining whether an employee is an unauthorized alien, to consider only the federal government's determination and stipulates that this determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and request the federal government to provide automated or testimonial verification. (A.R.S. § 23-212)
30. Stipulates that proof of verifying the employment authorization of an employee through the Basic Pilot Program creates a rebuttable presumption that an employer did not intentionally or knowingly employ an unauthorized alien. (A.R.S. § 23-212)
31. Stipulates that an employer who demonstrates good faith compliance with the requirements of federal law

pertaining to unfair immigration-related employment practices establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien. Federal law states that, with specific exceptions, it is an unfair immigration-related practice for a person or other entity to discriminate against any individual, other than an unauthorized alien, with respect to the hiring of the individual for employment or the discharging of the individual from employment because of the individual's national origin or because of a protected individual's citizenship status (8 U.S.C. 1324b). (A.R.S. § 23-212)

False and Frivolous Complaints

32. Classifies as a class 3 misdemeanor knowingly filing a false and frivolous complaint against an employer. (A.R.S. § 23-212)

Verification of Employment Eligibility

33. Requires, beginning January 1, 2008, every employer, after hiring an employee, to verify the employment eligibility of the employee through the Basic Pilot Program. (A.R.S. § 23-214)

Employer Notice

34. Requires DOR, by October 1, 2007, to provide a notice explaining the new requirements to every employer. The notice must include:
- a) the prohibition against intentionally or knowingly employing an unauthorized alien.
 - b) the penalties for a first and second violation.
 - c) that proof of use of the Basic Pilot Program creates a rebuttable presumption that the employer does not intentionally or knowingly employ an unauthorized alien.
 - d) that every employer is required to use the Basic Pilot Program beginning January 1, 2008.
 - e) how to enroll in the Basic Pilot Program.

Employer Sanctions Legislative Study Committee

35. Establishes the Employer Sanctions Legislative Study Committee (Committee) consisting of:
- a) three members of the Senate appointed by the President of the Senate (President), not more than two of whom are members of the same political party and one of whom is designated as cochair.
 - b) three members of the House of Representatives appointed by the Speaker of the House of Representatives (Speaker), not more than two of whom are members of the same political party and one of whom is designated as cochair.
 - c) a citizen of Arizona, appointed by the President, who owns a business in Arizona with no more than 30 employees.
 - d) a citizen of Arizona, appointed by the Speaker, who owns a business in Arizona with more than 30 employees.
36. Requires the Committee to:
- a) examine the laws and regulations pertaining to employer sanctions in Arizona, as well as the effects of these laws and whether they are being properly implemented.
 - b) examine if the employer sanctions laws are being applied to all businesses in Arizona in a fair manner.
 - c) examine if the complaint process is being implemented in a fair and just manner.
 - d) submit a report of its findings and recommendations to the Governor, the President and the Speaker by December 31, 2008.
37. Prohibits the Committee members from receiving compensation or reimbursement of expenses.
38. Repeals the Committee on January 2, 2009.

Appropriations

39. Appropriates \$100,000 from the state GF in FY 2007-2008 to the AG for the purpose of enforcing any immigration-related matters and the provisions relating to intentionally or knowingly employing unauthorized

aliens. The appropriation is exempt from lapsing requirements.

40. Appropriates \$2,430,000, which is exempt from lapsing requirements, from the state GF in FY 2007-2008 to ADOA to be distributed to the county attorneys in the state, for the purpose of enforcing any immigration-related matters and the provisions relating to intentionally or knowingly employing unauthorized aliens, as follows:
 - a) \$1,430,000 to each county attorney of a county in the state having a population of 1.5 million or more persons.
 - b) \$500,000 to each county attorney of a county in the state with a population of 800,000 or more persons but less than 1.5 million persons.
 - c) the remainder of the monies to be distributed as equally as possible to each county attorney of counties in the state with a population of less than 500,000 persons.
41. Appropriates \$70,000 from the state GF in FY 2007-2008 to DOR for the purpose of providing notification to employers.

Miscellaneous

42. Stipulates that the provisions pertaining to employment of unauthorized aliens must not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.
43. Names the act the Legal Arizona Workers Act.
44. Provides for the severability of the provisions.
45. Makes conforming changes.
46. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Requires an employer that receives a license after December 1, 2007, as opposed to January 1, 2008, to file an affidavit with the Secretary of State (SOS) within 30 days after receiving the license, as opposed to within 30 days of transacting business.
2. Requires the Industrial Commission of Arizona and DES to provide affidavit forms and notice forms to employers in November and December of this year.
3. Requires affidavit and notice forms to be provided in a timely manner.
4. Changes the database that DES must use to provide the affidavit and notice forms.
5. Requires an employer to file a new affidavit if the person who signed the affidavit ceases to be employed by the employer.
6. Permits the court to order the suspension of a license for a first or second violation of false swearing, as opposed to suspending the license itself, and requires the court to notify the appropriate agency of an order to suspend a license.
7. Establishes the time frame for which an employer's license may be suspended.
8. Requires the court to order the revocation of a license for a third violation of false swearing, as opposed to revoking the license itself, and requires the court to notify the appropriate agency of an order to revoke a license.
9. Establishes the time frame for which an employer's license must be revoked.
10. Requires a contractor or subcontractor that contracts with the state or a political subdivision to use the Basic Pilot Program only as permitted by the MOU.

11. Requires a contractor or subcontractor to disclose the Basic Pilot Program verification documents to a procurement officer of the state or a political subdivision only if disclosure is permitted by the MOU.
12. Removes the requirement that an employer that knowingly hires an unauthorized alien add the amount of compensation paid to the unauthorized alien to the employer's Arizona gross income.
13. Requires DES, the appeals board or an appeal tribunal to require employee-related reports from an employing unit as necessary to administer the employment security statutes.

Amendments Adopted by Committee of the Whole

1. Reduces the number of persons or entities of which a person must use the personal or entity identifying information, without consent, for an unlawful purpose or to cause loss in order for the person to commit aggravated identity theft.
2. Removes the definitions: "legal employment affidavit" and "services."
3. Modifies the definition of "license."
4. Removes all provisions pertaining to the legal employment affidavit.
5. Establishes penalties, involving license suspension for a first violation and license revocation for a second violation, for employers who knowingly employ unauthorized aliens.
6. Reduces the penalty for filing a false and frivolous complaint against an employer, from a class 2 misdemeanor for a first violation and a class 6 felony for a subsequent violation, to a class 3 misdemeanor for each violation.
7. Requires the AG or county attorney, when conducting an investigation, to verify the work authorization of the alleged unauthorized alien with the federal government, and requires the court to consider only this determination, which creates a rebuttable presumption.
8. Requires the AG or county attorney to notify specified entities of an unauthorized alien.
9. Prohibits the county attorney from bringing an action against an employer for an act that occurs before March 1, 2008.
10. Requires the AG to maintain and make publicly available copies of the court's orders for first violations and to maintain a database of the employers that have a first violation.
11. Requires all employers to use the Basic Pilot Program, as opposed to only public employers.
12. Removes the requirement that the Auditor General conduct an audit of the state's use of the Basic Pilot Program.
13. Removes the requirements pertaining to the use of the Basic Pilot Program by contractors and subcontractors that enter into a procurement contract with the state or a political subdivision.
14. Requires DES to notify employers of the new requirements.
15. Reduces, from \$500,000 to \$100,000, the appropriation to the AG and removes the appropriation to the SOS.
16. Removes the intent clause.
17. Removes the legislative findings.
18. Changes the name of the act.
19. Removes the delayed repeal.
20. Makes conforming changes.

Amendments Adopted by Conference Committee

1. Defines “intentionally.”
2. Modifies definition of “license.”
3. Prohibits employers from intentionally employing an unauthorized alien.
4. Modifies the penalty for a first violation of knowingly employing an unauthorized alien to include a three-year probationary period and possible license suspension and establishes penalties for intentionally employing an unauthorized alien that include a five-year probationary period and mandatory license suspension for a first violation and permanent revocation for a second violation.
5. Establishes an affirmative defense for an employer that demonstrates good faith compliance with federal law pertaining to unfair immigration-related employment practices.
6. Changes, from March 1, 2008, to January 1, 2008, the date on which the county attorney may begin to an file action against an employer for a violation and the date on which employers must begin to use the Basic Pilot Program.
7. Requires DOR, as opposed to DES, to provide notification of the new law to employers.
8. Establishes the Employer Sanctions Legislative Study Committee.
9. Reduces, from \$2,500,000 to \$2,430,000, the total appropriation to ADOA for the county attorneys and, from \$1,500,000 to \$1,430,000, the appropriation for a county with a population of 1.5 million persons or more.
10. Appropriates \$70,000 to DOR for employer notification.

House Action

GOV	2/20/07	DPA	6-4-0-0
APPROP	2/21/07	DPA	11-4-0-2
3 rd Read	3/15/07		46-13-1-0
Final Read	6/20/07		47-11-2-0

Senate Action

APPROP	4/3/07	DPA	7-3-1-0
3 rd Read	5/23/07		23-4-3-0
Final Read	6/20/07		20-4-6-0

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