

# THE ARIZONA REPUBLIC

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## IT'S THE LAW.

December 30, 2007  
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### WHAT IS THE LAW?

The sanctions law, known as the Legal Arizona Workers Act, is intended to ensure that no businesses in Arizona knowingly or intentionally hire or employ illegal immigrants.

Beginning Tuesday, all business owners in Arizona risk losing their state and local licenses if they knowingly or intentionally -- the law makes a distinction between "knowingly" and "intentionally" -- employ undocumented workers after that date. Licenses can be suspended 10 days or longer for a first offense and revoked altogether for a second offense.

Employers are required to check the legal status of their new hires using E-Verify, a free online federal program that checks names and identification documents to ensure that new employees are eligible to work. Employers also are accountable for the eligibility of existing workers, under the law.

Maricopa County Attorney Andrew Thomas has said his office is concerned primarily with new hires, but it could pursue claims against existing workers as well.

The law sharpens the punishment for identity theft, a crime frequently associated with illegal workers.

It now is aggravated identity theft, a felony, to possess the identity information of someone else to seek work or to have such information for three or more people without their consent.

Under the law, it doesn't matter whether the information is for an actual person or is a bogus identity.

### WHO IS AFFECTED?

The sanctions law applies to every employer in Arizona regardless of the size of the business.

Employers face mandatory suspension of their state- and local-issued business licenses for a first offense and permanent license revocation for a second one.

Under the law, each business location seems to be treated separately from its corporate cousins. This means that if a franchise with a violation at one location faces a shutdown,

others with separate licenses are not affected unless they also are found to have knowingly employed illegal workers.

However, many business owners with multiple locations share business licenses for tax and legal reasons. This means that those businesses that operate under a single license as one corporate entity face a shutdown at all their sites.

The law doesn't punish undocumented workers but does require state authorities to contact federal immigration officials about them. Typically, this could lead to prosecution or deportation.

The law does not apply to consumers. This means those who pay someone for business services, such as yard work, are not legally liable under the sanctions law.

## WHO ENFORCES IT?

The state's 15 county attorneys are responsible primarily for enforcing the sanctions law.

The state attorney general can investigate cases but must refer them to the local county attorney for legal action.

County attorneys must investigate any alleged violation unless it is determined to be frivolous. After receiving a complaint, the county attorney must check on the legal status of the workers by inquiring with federal authorities. The county attorneys cannot try to determine independently a worker's legal status.

If the complaint appears to have merit, the county attorney must contact local police and U.S. Bureau of Immigration and Customs Enforcement about the suspected violators.

Although federal authorities may pursue their own immigration-related actions against the worker or the employer, the county attorney must go to Superior Court to resolve the licensing matter formally for the business.

In all cases, an employee's actual legal working status is based on a determination by the federal government for that person.

This means Arizona's judges consider primarily whether a business owner knowingly intended to employ a worker the federal government has determined is illegal.

The sanctions law is intended to be treated as a law-enforcement priority.

Prosecutors, for example, are ordered to review every complaint. The Superior Courts are ordered to put the sanction cases on a fast track, and the attorney general must compile a public database of employers who violate the sanctions law.

However, law-enforcement officials have said that the law includes little budget support for these new obligations.

## WHAT ABOUT FRIVOLOUS COMPLAINTS?

Anyone can make a complaint about a suspected violation, but authorities have emphasized that it should have a reasonable basis. They want to avoid discriminatory complaints that are based on a general suspicion because, for example, workers don't speak English or aren't White.

Making a frivolous complaint to authorities is a misdemeanor crime. A conviction could carry up to 30 days in jail and a \$500 fine.

#### HOW DO I CHECK A NEW HIRE?

Registering for E-Verify, the federal online database that checks employment eligibility, can be done through the Web site for the U.S. Bureau of Citizenship and Immigration Services, at [www.uscis.gov](http://www.uscis.gov).

Click on the E-Verify logo and follow the links to E-Verify registration.

The program is free, but companies may need to develop software that works with the database.

The government offers toll-free assistance in completing the registration process for E-Verify. Call 888-464-4218.

Before using the program, an employer, or someone authorized by the employer, must sign a memorandum of understanding that outlines the terms of service.

A key requirement is that E-Verify can be used only for new hires within three business days of their start dates. It cannot be legally used to consider whether to hire someone or to screen existing employees.

Also, the program checks employment eligibility only. It does not reflect a worker's immigration status.

Third-party businesses known as designated agents can automate or take over the I-9 documentation and E-Verify process for employers who would rather not learn the program. Some of these businesses handle other human-resources issues as well.

#### WHAT ARE THE PENALTIES?

The sanctions law effectively gives the licensing "death penalty" to businesses that are caught twice knowingly keeping illegal immigrants on the payroll.

First offenses are more complicated.

Business licenses are suspended up to 10 days or at least 10 days for a first offense, depending on circumstances.

The difference between "knowingly" and "intentionally" hiring an illegal worker is a legal determination that an employer not only knew an employee wasn't permitted to work in this country but intended to have an illegal worker on the payroll.

Violators who "knowingly" hire can have their business licenses suspended up to 10 days for a first offense. Violators who "intentionally" hire must have their licenses suspended at least 10 days. The law does not specify the maximum suspension for a first offense for intentional violations.

In both types of cases, Superior Court judges will determine the length of the suspension and base it on a variety of factors, including: how long the business had employed someone illegally; whether the business had any prior misconduct; and the degree of harm caused by the violation.

For both types of violations, employers must terminate all their illegal employees and file an affidavit within three business days swearing not to hire illegal workers again.

First-time offenders are placed on probation and must file quarterly reports to the county attorney about each new employee they hire at that location during their supervision.

For those with knowing violations, probation lasts three years. Intentional violators face five years of probation.

#### WHAT DOES IT COST?

It is unclear what the sanctions law will cost the state's 150,000 businesses or its government agencies. The cost to businesses will depend on how sizable their operations are.

E-Verify, the federal online program that checks an employee's legal work status, is a free program available to employers and is required for new hires under the sanctions law.

Federal authorities say checking names on E-Verify is a process that usually takes no longer than a few minutes per name. Using the program for new hires gives business the presumption of trying not to hire illegal workers.

Some owners of large businesses have said that the process has forced them to create positions just to ensure compliance with the state law. Some small-business groups have said the law will force the smallest employers to get computers and go online, an expense that cuts into their already-thin margins.

Also, third-party businesses, known as designated agents, can handle employment-verification services for employers, including E-Verify checks and processing I-9 forms.

This fiscal year, legislators budgeted \$2.6 million to prosecutors for enforcement and to notify business owners of the change.

The money breaks down this way:

In October, the state's Department of Revenue had \$70,000 to mail notices of the new law to businesses.

The state's attorney general receives \$100,000 to help enforce the law and maintain a database of violations throughout the year.

The Maricopa County attorney receives \$1.43 million and Pima County's gets \$500,000 for enforcement needs.

The other 13 county attorneys divide \$500,000.

The law requires prosecutors to contact local authorities and federal immigration officials about suspected illegal workers, which could strain budgets if it leads to widespread arrests.

It is hoped that the law will encourage illegal workers to leave before enforcement is necessary, keeping costs relatively low.

Even so, the state law figures to keep federal authorities busy. Demand for the E-Verify system is growing rapidly because it is expected that all Arizona businesses will have to register for it or contract with someone who does.

Meanwhile, other states have passed laws that encourage using E-Verify.

#### HOW DO I REGISTER FOR E-VERIFY?

Using E-Verify largely requires the same documents that businesses have relied on for checking employment eligibility in the past. The system does require posting formal notice to employees and providing certain documents for those whose eligibility is not confirmed immediately.

According to the Web site for U.S. Bureau of Citizenship and Immigration Services, employers need from a new worker:

- \* Full name.
- \* Date of birth.
- \* Social Security number.
- \* Citizenship status.
- \* Type of documentation provided for I-9 form.
- \* Proof of identity with expiration date.

E-Verify has added what is known as a "photo screening tool" to the program for use with non-citizen new hires. Non-citizens must present either an I-551 (permanent resident card) or an I-766 (employment authorization document). The images should be identical.

The photo database goes back only to 2004, however, so documents issued before then will not appear.

In addition, employers must post a notice that they use the E-Verify system.

Immigration Services officials say about 93 percent of all names are verified immediately as eligible to work in the United States. Most of those who are not verified are because data were entered incorrectly or differ from information on file with the Social Security Administration.

Frequently, the differences involve changes to legal names that were not recorded, or changes to immigration or citizenship status that were not shared with the Social Security Administration.

If a worker's information is considered a mismatch by E-Verify, employers must notify the worker and provide a document that outlines options for appeal and contact information for doing so. Employers cannot immediately fire the individual.

Workers who are not verified have eight federal business days to challenge the mismatch formally. Federal officials say most challenges are resolved within a day.

#### WHAT IS THE LEGAL CHALLENGE?

An alliance of business owners and immigrant-rights groups has filed a pair of related federal lawsuits challenging the constitutionality of the state's sanctions law.

Those challenging the law argue that it requires businesses to participate in E-Verify, an online federal program that checks names and identification documents in an effort to ensure new employees are eligible to work in the United States. Since 1986, the federal government has required only that private employers maintain paper identification records, known as I-9 forms, for new hires.

Opponents of the state's new law say it improperly overrides federal immigration and employment rules and can lead to workplace discrimination by those trying to follow it. The state maintains the law affects only business licensing, an area it is entitled to regulate.

In the first case, U.S. District Judge Neil Wake ruled that the business groups incorrectly sued only the governor and attorney general. That case is being appealed to the 9th U.S. Circuit Court of Appeals in San Francisco.

In the second case -- which added the state's 15 county prosecutors -- Wake denied a request to keep the law temporarily from going into effect on Jan. 1. The Appeals Court declined to rule on an appeal of that before Jan. 1, clearing the way for the law to go into effect as originally scheduled.

On Jan. 16, Wake is scheduled to hold a hearing in the second case to determine whether the law is constitutionally valid. Meanwhile, prosecutors have said no enforcement actions will be taken before Feb. 1, though investigations can begin.

Regardless of Wake's eventual decision, the losing side is expected to appeal. That would send the second case to the Appeals Court, too.

Given the flood of immigration-related laws sweeping the country and the questions of constitutional law and the boundaries of state's rights they raise, it is possible that the U.S. Supreme Court could choose to hear the Arizona case or a similar one elsewhere that could settle the matter.

In all, the legal process could take months to resolve.

#### WHAT IS UNCLEAR ABOUT THE LAW?

Plenty.

For starters, the E-Verify system at the heart of the law is scheduled to end in November 2008. Congress needs to extend E-Verify to make Arizona's law even sustainable.

Lawyers, too, have raised several issues that would seem to cloud even the simplest assumptions about the law.

For example, the law makes it a crime to file frivolous complaints about businesses, but lawyers say no standard is established to determine what "frivolous" means.

Also, the standard for opening an investigation could be different throughout the state.

The Maricopa County attorney has said his office will accept anonymous complaints. The other 14 county attorneys in the state have said they will require names with complaints.

The state requires Superior Court judges to rely on the federal government to determine whether an employee actually is illegal. It remains unclear whether that determination is based on a formal hearing with legal due process for the worker or simply relies on other sources, such as E-Verify, an electronic system known occasionally to make mistakes.

Even the punishment phase of the law raises procedural questions.

For example, employers with a violation are required to dismiss all of their illegal workers, but the law doesn't spell out how they should know who those workers are.

The E-Verify system can't be used for existing employees, only new hires. This presumably leaves businesses relying on the I-9 paperwork system, which the U.S. government stopped regularly auditing in 2000.

Using E-Verify properly seems to be at odds with some of the rules for filling out I-9 documents, business lawyers say.

For example, federal rules do not require making copies of the documents used to complete I-9 forms, but they do say that if an employer keeps some documents, they must keep documents for all employees.

Yet, E-Verify's photo tool requires making copies of federally issued photo Ids of immigrants.

Further complicating the matter, third-party businesses that offer employment-verification services do not yet need to use the photo tool. This suggests it is less stringent for employers to use a designated agent to verify employment status of an immigrant worker rather than employers checking for themselves.

#### WHERE CAN I GET MORE INFORMATION?

For more information about Arizona's new employer-sanctions law:

\* The Maricopa County attorney has posted his interpretation of the law and explained how it will work in his jurisdiction. Beginning Tuesday, he will accept complaints about suspected violations online. [www.maricopacountyattorney.org/lawa/](http://www.maricopacountyattorney.org/lawa/)

\* The Pinal County attorney has posted his interpretation of the law and explained how it will work in his jurisdiction.

<http://pinalcounty.org/Attorney/PDF/EmployerBrochureforwebsite.pdf>

\* The U.S. Bureau of Citizenship and Immigration Services provides information about E-Verify. You can learn more about the program or sign up for it by going to [www.uscis.gov](http://www.uscis.gov).

\* **Creative Business Resources, a human-resources outsourcing company, operates a Web site intended to provide information about the law and how businesses must comply. Visit the site at**

[www.azimmigrationcompliance.com](http://www.azimmigrationcompliance.com).

\* The group Arizona Employers for Immigration Reform operates a site with information about the legal challenge to the law provided by those who are suing to have it overturned. You can read documents in the case at [www.azeir.com](http://www.azeir.com).

\* The American Civil Liberties Union is among the groups that have sued to overturn illegal immigrant-related laws and ordinances nationwide. You can read about the group's activities or review legal documents, including the Arizona case, at [www.aclu.org/immigrants](http://www.aclu.org/immigrants).

\* You can read the text of the law at:

[www.azleg.gov/search/oop/qfullhit.asp?CiWebHitsFile=/legtext/48leg/1r/bills/hb2779c.htm&CiRestriction=2779&Ci](http://www.azleg.gov/search/oop/qfullhit.asp?CiWebHitsFile=/legtext/48leg/1r/bills/hb2779c.htm&CiRestriction=2779&Ci)

\* The Arizona Legislature's Web site provides information about the law's history as a bill. You can review its legislative history at:

[www.azleg.gov/SearchResults.asp?SearchedFrom=%2FBills.asp&Scope=%2Flegtext%2F48leg%2F1R&SearchPhrase=2779](http://www.azleg.gov/SearchResults.asp?SearchedFrom=%2FBills.asp&Scope=%2Flegtext%2F48leg%2F1R&SearchPhrase=2779)