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ARIZONA STATE SENATE

Forty-ninth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1070

immigration; law enforcement; safe neighborhoods

Purpose

Requires officials and agencies of the state and political subdivisions to fully comply with and assist in the enforcement of federal immigration laws and gives county attorneys subpoena power in certain investigations of employers. Establishes crimes involving trespassing by illegal aliens, stopping to hire or soliciting work under specified circumstances, and transporting, harboring or concealing unlawful aliens, and their respective penalties.

Background

Federal law provides that any alien who 1) enters or attempts to enter the U.S. at any time or place other than as designated by immigration officers, 2) eludes examination by immigration officers, or 3) attempts to enter or obtains entry to the U.S. by a willfully false or misleading representation is guilty of improper entry by an alien. For the first commission of the offense, the person is fined, imprisoned up to six months, or both, and for a subsequent offense, is fined, imprisoned up to 2 years, or both (8 U.S.C. § 1325).

The U.S. Immigration and Customs Enforcement (ICE) is the primary authority for enforcing immigration laws. ICE was created in March 2003 as an investigative branch of the Department of Homeland Security. ICE was the result of combining the Immigration and Naturalization Service and the U.S. Customs Service.

Current statute defines *criminal trespass in the first degree* as a person knowingly entering or remaining unlawfully in areas related to residential structures, residential yards, real property subject to a valid mineral claim or lease under certain circumstances, property if the person defaces religious symbols or religious property, or critical public service facilities. Depending on the circumstances, criminal trespass in the first degree provides penalties ranging from a class 1 misdemeanor to a class 6 felony (A.R.S. § 13-1504).

In 2007, Arizona enacted the Legal Arizona Workers Act (LAWA), prohibiting an employer from knowingly or intentionally employing an unauthorized alien and establishing penalties for employers in violation. The U.S. Citizenship and Immigration Services office administers the Systematic Alien Verification for Entitlements (SAVE) Program. The SAVE Program, together with the Social Security Administration (SSA), administers E-Verify, which allows employers to electronically confirm the employment eligibility of all newly hired employees. LAWA requires all Arizona employers to use E-Verify to verify the employment eligibility of new hires. Proof of verifying the employment authorization of an employee through E-Verify creates a rebuttable presumption that an employer did not intentionally or knowingly employ an unauthorized alien.

The fiscal impact is unknown; however, there may be additional costs associated with criminal prosecution and detention of persons who are accused and convicted of the crimes established in this legislation. Additionally, the addition of new fines associated with this measure may also have an impact.

Provisions

Enforcement

1. Requires a reasonable attempt to be made to determine the immigration status of a person during any legitimate contact made by an official or agency of the state or a county, city, town or political subdivision (political subdivision) if reasonable suspicion exists that the person is an alien who is unlawfully present in the U.S.
2. Requires the person's immigration status to be verified with the federal government pursuant to federal law.
3. Requires an alien unlawfully present in the U.S. who is convicted of a violation of state or local law to be transferred immediately to the custody of ICE or Customs and Border Protection, on discharge from imprisonment or assessment of any fine that is imposed.
4. Allows a law enforcement agency to securely transport an alien who is unlawfully present in the U.S. and who is in the agency's custody to:
 - a) a federal facility in this state or
 - b) any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency.
5. Allows a law enforcement officer, without a warrant, to arrest a person if the officer has probable cause to believe that the person has committed any public offense that makes the person removable from the U.S.
6. Prohibits officials or agencies of the state and political subdivisions from being prevented or restricted from sending, receiving or maintaining an individual's immigration status information or exchanging that information with any other governmental entity for the following official purposes:
 - a) determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state;
 - b) verifying any claim of residence or domicile if that verification is required under state law or a judicial order issued pursuant to a civil or criminal proceeding in the state;
 - c) confirming a detainee's identity; and
 - d) if the person is an alien, determining whether the person is in compliance with federal alien registration laws.
7. Disallows officials or agencies of the state or political subdivisions from adopting or implementing policies that limit immigration enforcement to less than the full extent permitted by federal law, and allows a person to bring an action in superior court to challenge an official or agency that does so.
8. Requires the court, if there is a judicial finding that an entity has committed a violation, to order any of the following:

- a) that the plaintiff recover court costs and attorney fees;
- b) that the defendant pay a civil penalty of not less than \$1,000 and not more than \$5,000 for each day that the policy has remained in effect after the filing of the action.

9. Requires the court to collect and remit the civil penalty to the Department of Public Safety (DPS), which must establish a special subaccount for the monies in the account established for the Gang and Immigration Intelligence Team Enforcement Mission (GIITEM) appropriation.

10. Specifies that law enforcement officers are indemnified by their agencies against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this statute to which the officer may be a party by reason of the officer being or having been a member of the law enforcement agency, except in relation to matters in which the officer is adjudged to have acted in bad faith.

Trespassing by Illegal Aliens

11. Specifies that, in addition to any violation of federal law, a person is guilty of trespassing if the person is:

- a) present on any public or private land in the state and
- b) is not carrying his or her alien registration card or has willfully failed to register.

12. Requires, in the enforcement of this statute, the final determination of an alien's immigration status to be determined by:

- a) a law enforcement officer who is authorized to verify or ascertain an alien's immigration status or
- b) a law enforcement officer or agency communicating with ICE or the U.S. Border Protection.

13. Stipulates that a person is not eligible for suspension or commutation of sentence or release on any basis until the sentence imposed is served.

14. Directs the person to pay jail costs and an additional assessment of at least \$500 for the first violation or at least \$1,000 for subsequent offenses.

15. Requires the court to collect and remit the assessments to DPS for the special GIITEM subaccount.

16. Specifies that the trespassing statute does not apply to a person who maintains authorization from the federal government to remain in the U.S.

17. Classifies the violation as follows:

- a) a class 2 felony if the person commits the violation while in possession of a dangerous drug, precursor chemicals used in the manufacturing of methamphetamine, a deadly weapon or dangerous instrument or property that is used for committing an act of terrorism;
- b) a class 4 felony for a second or subsequent offense or if the person, within 60 months before the violation, accepted a voluntary removal from the U.S. or has been deported;

- c) a class 1 misdemeanor in all other cases.

Unlawful Stopping and Solicitation of Work

18. Specifies that it is unlawful, if a motor vehicle is stopped on a street, roadway or highway and blocks or impedes the normal movement of traffic:

- a) for a motor vehicle occupant to attempt to hire or hire and pick up passengers for work at a different location;
- b) for a person to enter the motor vehicle in order to be hired by a motor vehicle occupant and to be transported to work at a different location.

19. Stipulates that it is unlawful for a person who is unlawfully present in the U.S. 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 Arizona.

20. Classifies these offenses as class 1 misdemeanors.

21. Defines solicit and unauthorized alien.

Unlawful Transporting

22. Specifies that it is unlawful for a person to do or attempt to do the following if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the U.S. in violation of law:

- a) transport or move an alien in Arizona in a means of transportation;
- b) conceal, harbor or shield an alien from detection in any place in Arizona, including any building or means of transportation.

23. Stipulates it is unlawful to encourage or induce an alien to come to or reside in Arizona 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.

24. Subjects a means of transportation used in the commission of a violation to mandatory vehicle immobilization or impoundment.

25. Classifies these offenses as class 1 misdemeanors and subjects offenders to fines of at least \$1,000, except that a violation that involves 10 or more illegal aliens is a class 6 felony with a fine of at least \$1,000 for each alien who is involved.

Investigations of Employers

26. Allows the county attorney, in investigations of employers who are alleged to have knowingly or intentionally hired unauthorized aliens, to take evidence, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses and cause depositions to be taken.
27. Exempts proceedings held during the course of a confidential investigation from open meeting laws.
28. Stipulates that an employer is not entrapped in an investigation if the employer was predisposed to knowingly or intentionally employ an unauthorized alien and law enforcement officers or their agents merely provided the employer with an opportunity to do so.
29. States that it is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identities.
30. Directs employers to keep verification records of their employees' work eligibility through E-Verify.
31. Establishes a class 3 felony for failing to:
 - a) verify employment eligibility through E-Verify or
 - b) keep records of verifications.

Miscellaneous

32. Specifies that monies in the special GIITEM subaccount are subject to legislative appropriation for distribution for gang and immigration enforcement and for county jail reimbursement costs relating to immigration.
33. Stipulates that the terms of the act regarding immigration have the meanings given to them under federal immigration law.
34. Requires the act to 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 U.S. citizens.
35. Contains intent and severability clauses.
36. Titles the legislation the "Support Our Law Enforcement and Safe Neighborhoods Act."
37. Makes conforming changes.
38. Becomes effective on the general effective date.