

PROPOSITION 202

OFFICIAL TITLE

AN INITIATIVE MEASURE

AMENDING TITLE 13, CHAPTER 20, ARIZONA REVISED STATUTES, BY AMENDING SECTIONS 13-2008, 13-2009, AND 13-2010; AND AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY AMENDING SECTIONS 23-211, 23-212, 23-213, AND 23-214, AND ADDING SECTION 23-215.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

Section 1. Section 13-2008, Arizona Revised Statutes, is amended to read:

13-2008. Taking AND KNOWINGLY ACCEPTING identity of another person or entity: classification

A. A person commits taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose, ~~or~~ to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, OR WITH THE INTENT TO OBTAIN OR CONTINUE EMPLOYMENT.

B. A PERSON COMMITS THE ACT OF KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON OR ENTITY IN HIRING AN EMPLOYEE IF THE PERSON, WITH ACTUAL KNOWLEDGE, KNOWINGLY ACCEPTS ANY PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING INFORMATION OF ANOTHER PERSON OR ENTITY WHO IS NOT ACTUALLY THE PERSON PRESENTING SUCH IDENTIFYING INFORMATION FOR THE PURPOSE OF DETERMINING WHETHER THE PERSON PRESENTING SUCH IDENTIFYING INFORMATION HAS THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS DESCRIBED AND DETERMINED UNDER THE PROCESSES AND PROCEDURES UNDER 8 UNITED STATES CODE SECTION 1324a.

BC. On the request of a person or entity, a peace officer in any jurisdiction in which an element of the offenseS SET FORTH IN THIS SECTION is committed, a result of the offenseS SET FORTH IN THIS SECTION occurs or the person or entity whose identity is taken OR ACCEPTED resides or is located shall take a report. The peace officer may provide a copy of the report to any other law enforcement agency that is located in a jurisdiction in which a violation of this section occurred.

GD. If a defendant is alleged to have committed multiple violations of this section within the same county, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any precinct in which a violation is alleged to have occurred. If a defendant is alleged to have committed multiple violations of this section within the state, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any county in which a violation is alleged to have occurred.

DE. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

EF. Taking the identity of another person or entity OR KNOWINGLY ACCEPTING THE IDENTITY OF ANOTHER PERSON OR ENTITY is a class 4 felony.

Section 2. Section 13-2009, Arizona Revised Statutes, is amended to read:

13-2009. Aggravated taking identity of another person or entity: classification

A. A person commits aggravated taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of either:

1. ~~Three~~ TWO or more other persons or entities, including real or fictitious persons or entities, without the consent of the other persons or entities, with the intent to obtain or use the other persons' or entities' identities for any unlawful purpose or to cause loss to the persons or entities whether or not the persons or entities actually suffer any economic loss.
2. Another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with

the intent to obtain or use the other person's or entity's identity for any unlawful purpose and causes another person or entity to suffer an economic loss of ~~three~~ ONE thousand dollars or more.

3. Another person, including a real or fictitious person, with the intent to obtain OR CONTINUE employment.

B. In an action for aggravated taking the identity of another person or entity under subsection A, paragraph 1 of this section, proof of possession out of the regular course of business of the personal identifying information or entity identifying information of ~~three~~ TWO or more other persons or entities may give rise to an inference that the personal identifying information or entity identifying information of the ~~three~~ TWO or more other persons or entities was possessed for an unlawful purpose.

C. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

D. Aggravated taking the identity of another person or entity is a class 3 felony.

Section 3. Section 13-2010, Arizona Revised Statutes, is amended to read:

13-2010. Trafficking in the identity of another person or entity: classification

A. A person commits trafficking in the identity of another person or entity if the person knowingly sells, transfers or transmits any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of the other person or entity for any unlawful purpose, ~~or~~ to cause loss to the person or entity whether or not the other person or entity actually suffers any economic loss, OR WITH THE INTENT OF ALLOWING ANOTHER PERSON TO OBTAIN OR CONTINUE EMPLOYMENT.

B. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

C. Trafficking in the identity of another person or entity is a class 2 felony.

Section 4. Title 23, Chapter 2, Article 2, Arizona Revised Statutes, is amended to read:

Article 2. Employment of unauthorized aliens
23-211. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means any agency, department, board or commission of this state or a county, city or town that issues a license for purposes of operating a business in this state.
2. "~~Basic pilot~~ E-VERIFY program" means the ~~basic~~ employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or ANY OF its successor programS.
3. "Employee" means any person who IS HIRED TO perform employment services IN THIS STATE for an employer pursuant to an employment relationship between the employee and employer.
4. "Employer" means any individual or type of organization that transacts business in this state, WHETHER OR NOT SUCH INDIVIDUAL OR ORGANIZATION ~~that~~ has a license issued by an agency in this state, and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons.
5. "Intentionally" has the same meaning prescribed in section 13-105 AND DETERMINED UNDER THE PROCESSES AND PROCEDURES UNDER 8 UNITED STATES CODE SECTION 1324a.
6. "Knowingly employ an unauthorized alien" means the actions described in AND DETERMINED UNDER THE PROCESSES AND PROCEDURES AS ACTUAL KNOWLEDGE BY AN OWNER OR OFFICER OF AN EMPLOYER UNDER 8 United States Code section 1324a. This term shall be interpreted consistently with 8 United States Code section 1324a and any applicable federal rules and regulations.
7. "License":

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(a) Means any agency permit, certificate, approval, registration, charter or similar form of authorization, INCLUDING BUT NOT LIMITED TO ARTICLES OF INCORPORATION UNDER TITLE 10, CERTIFICATES OF PARTNERSHIP, PARTNERSHIP REGISTRATIONS OR ARTICLES OF ORGANIZATION UNDER TITLE 29, GRANTS OF AUTHORITY ISSUED UNDER TITLE 10, CHAPTER 15, AND ANY TRANSACTION PRIVILEGE TAX LICENSES, that is required by law and that is issued by any agency for the purposes of operating a business in this state AND AS ALLOWED UNDER FEDERAL LAW.

(b) Includes:

- (i) ~~Articles of incorporation under title 10.~~
 - (ii) ~~A certificate of partnership, a partnership registration or articles of organization under title 29.~~
 - (iii) ~~A grant of authority issued under title 10, chapter 15.~~
 - (iv) ~~Any transaction privilege tax license.~~
- (c) Does not include:
- (i) Any license issued pursuant to title 45 or 49 or rules adopted pursuant to those titles.
 - (ii) Any professional license.

8. "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 AND DETERMINED UNDER THE PROCESSES AND PROCEDURES UNDER 8 United States Code section 1324a(h)(3).

23-212. Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer WHO IS DETERMINED TO ~~shall not~~ intentionally employ an unauthorized alien or knowingly employ an unauthorized alien IN THIS STATE SHALL BE SANCTIONED ACCORDING TO THIS SECTION.

B. On receipt of a WRITTEN AND SIGNED complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien IN THIS STATE IN VIOLATION OF SUBSECTION A, the attorney general or county attorney shall DETERMINE WHETHER TO investigate ~~whether~~ IF the employer has violated subsection A. When investigating SUCH a complaint, the attorney general or county attorney shall COMPLY WITH ALL FEDERAL LAW AND verify the VIOLATION INVOLVING work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c) TO THE EXTENT PROVIDED IN OR ALLOWED UNDER FEDERAL LAW AND REGULATIONS. A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States BUT SHALL RELY UPON, AND ONLY UPON, THE PROCESSES AND PROCEDURES SET FORTH IN 8 UNITED STATES CODE SECTION 1324a AND OTHER APPLICABLE FEDERAL LAW. An alien's immigration status or work authorization status shall, TO THE EXTENT PROVIDED OR ALLOWED BY THE FEDERAL GOVERNMENT, be verified with the federal government pursuant to 8 United States Code section 1373(c) TO THE EXTENT PROVIDED IN FEDERAL LAW AND REGULATIONS. A person who knowingly files a false and OR frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not frivolous OR FALSE:

1. The attorney general or county attorney shall notify the United States immigration and customs enforcement of the unauthorized alien.
2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.
3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection D if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection A shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is employed IN THIS STATE. The county attorney shall not bring an action against any employer for any violation of subsection A that occurs before January 1, ~~2008~~ 2009. A second violation of this section shall be based only on an unauthorized alien who is employed by the employer IN THIS STATE after an action has been brought for a violation of subsection A.

E. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

F. On a finding of a violation of subsection A:

1. For a first violation during a three year period that is a knowing violation of subsection A, the court:

(a) Shall CONFIRM THAT ~~order~~ the employer ~~to~~ HAS TERMINATED OR WILL terminate the employment of all unauthorized aliens IN THIS STATE.

(b) Shall order the employer to be subject to a three year probationary period. During the probationary period the employer shall file quarterly reports IN THE FORM PROVIDED IN A.R.S. SECTION 23-722.01 with the county attorney of each new employee who is hired by the employer at the specific location IN THIS STATE where the unauthorized alien performed work IN THIS STATE.

(c) Shall order the employer to file a signed sworn affidavit with the county attorney within three business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens IN THIS STATE and that the employer will not intentionally or knowingly employ an unauthorized alien IN THIS STATE. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer IN THIS STATE and that are necessary to operate the employer's business at the employer's business location IN THIS STATE where the unauthorized alien performed work IN THIS STATE. If a license is not necessary to operate the employer's business at the specific location IN THIS STATE where the unauthorized alien performed work IN THIS STATE, but a license is necessary to operate the employer's business in general IN THIS STATE, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business WITHIN THIS STATE, IF ANY. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G.

(d) May order the appropriate agencies to suspend all licenses described in subdivision (c) of this paragraph that are held by the employer IN THIS STATE for not to exceed ten business days. The court shall base its decision to suspend under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

- (i) The number of unauthorized aliens employed by the employer IN THIS STATE.
- (ii) Any prior misconduct by the employer IN THIS STATE.
- (iii) The degree of harm resulting from the violation.
- (iv) Whether the employer made good faith efforts to comply with any applicable requirements.
- (v) The duration of the violation.
- (vi) The role of the directors, officers or principals of the employer IN THIS STATE in the violation.
- (vii) Any other factors the court deems appropriate.

2. For a first violation during a five year period that is an intentional violation of subsection A, the court shall:

(a) ~~Order~~ CONFIRM THAT the employer ~~to~~ HAS TERMINATED OR WILL terminate the employment of all unauthorized aliens IN THIS STATE.

(b) Order the employer to be subject to a five year probationary period. During the probationary period the employer shall file quarterly reports IN THE FORM PROVIDED IN A.R.S. SECTION 23-722.01 with the county attorney of each new employee who is hired by the employer at the specific location IN THIS STATE where the unauthorized alien performed work IN THIS STATE.

(c) Order the appropriate agencies to suspend all licenses, described in subdivision (d) of this paragraph that are held by the employer IN THIS STATE for a minimum of ten days. The court shall base its decision on the length of the suspension under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

(i) The number of unauthorized aliens employed by the employer IN THIS STATE.

(ii) Any prior misconduct by the employer IN THIS STATE.

(iii) The degree of harm resulting from the violation.

(iv) Whether the employer made good faith efforts to comply with any applicable requirements.

(v) The duration of the violation.

(vi) The role of the directors, officers or principals of the employer IN THIS STATE in the violation.

(vii) Any other factors the court deems appropriate.

(d) Order the employer to file a signed sworn affidavit with the county attorney. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens IN THIS STATE and that the employer will not intentionally or knowingly employ an unauthorized alien IN THIS STATE. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer IN THIS STATE and that are necessary to operate the employer's business at the employer's business location IN THIS STATE where the unauthorized alien performed work IN THIS STATE. If a license is not necessary to operate the employer's business at the specific location IN THIS STATE where the unauthorized alien performed work IN THIS STATE, but a license is necessary to operate the employer's business in general IN THIS STATE, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business WITHIN THIS STATE, IF ANY. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G.

3. For a second violation of subsection A during the period of probation, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer IN THIS STATE and that are necessary to operate the employer's business at the employer's business location IN THIS STATE where the unauthorized alien performed work IN THIS STATE. If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work IN THIS STATE, but a license is necessary to operate the employer's business in general IN THIS STATE, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business IN THIS STATE. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F and shall maintain a database of the employers who have a first violation of subsection A and make the court orders available on the attorney general's website.

H. On determining whether THERE HAS BEEN A VIOLATION THAT an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code section 1373(c) AND AS DETERMINED IN ACCORDANCE WITH THE PROCESSES AND PROCEDURES SET FORTH IN 8 UNITED STATES CODE SECTION 1324a AND OTHERWISE REQUIRED UNDER FEDERAL LAW. The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code section 1373(c) AND AS DETERMINED IN ACCORDANCE WITH THE PROCESSES AND PROCEDURES SET FORTH IN 8 UNITED STATES CODE SECTION 1324a AND OTHERWISE REQUIRED UNDER FEDERAL LAW.

I. For the purposes of this section, proof of verifying the employment authorization of an employee through the ~~basic pilot~~E-VERIFY program OR AS OTHERWISE PROVIDED UNDER 8 UNITED STATES CODE SECTION 1324a creates a NON-

rebuttable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

J. For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 United States Code sections 1324a OR 1324b establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

23-213. Employer actions; federal or state law compliance

This article shall not be construed to require an employer to take any action that WOULD, OR THAT the employer believes in good faith would, violate federal or state law.

23-214. Verification of employment eligibility: ~~basic pilot~~E-VERIFY program

After December 31, ~~2007~~ 2008, every employer, after hiring an employee, shall TO THE EXTENT PROVIDED AND ALLOWED BY THE FEDERAL GOVERNMENT, verify the employment eligibility of the employee through the ~~basic pilot~~E-VERIFY program OR SUCH OTHER PROCEDURES AS PROVIDED UNDER 8 UNITED STATES CODE SECTION 1324a.

23-215. PUNISHMENT OF CASH-PAYING, TAX-AVOIDING, ILLEGAL EMPLOYERS

A. IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, AN EMPLOYER SHALL BE SUBJECT TO THE PENALTIES PROVIDED IN PARAGRAPH B OF THIS SECTION IF THE EMPLOYER HAS MORE THAN FOUR EMPLOYEES AND PAYS HOURLY WAGES OR SALARY IN CASH AND NOT BY CHECK OR DIRECT DEPOSIT TO A FINANCIAL INSTITUTION AND THE EMPLOYER COMMITS ANY OF THE FOLLOWING VIOLATIONS:

1. FAILS TO MAKE WITHHOLDINGS FROM EMPLOYEE COMPENSATION AND REMIT THE WITHHOLDINGS TO THE ARIZONA DEPARTMENT OF REVENUE AS REQUIRED BY STATE LAW;
2. FAILS TO REPORT THE HIRING OF EMPLOYEES TO THE DEPARTMENT OF ECONOMIC SECURITY AS REQUIRED BY TITLE 23, CHAPTER 4, ARTICLE 5;
3. FAILS TO MAKE CONTRIBUTIONS TO THE DEPARTMENT OF ECONOMIC SECURITY FOR UNEMPLOYMENT COMPENSATION BENEFITS AS REQUIRED BY TITLE 23, CHAPTER 4, ARTICLE 5;
4. FAILS TO PROVIDE COVERAGE FOR WORKERS COMPENSATION FOR EMPLOYEES AS REQUIRED BY TITLE 23, CHAPTER 6.

B. THE ATTORNEY GENERAL MAY BRING AN ACTION IN SUPERIOR COURT AGAINST AN EMPLOYER FOR VIOLATION OF PARAGRAPH A OF THIS SECTION. IF THE COURT FINDS THE EMPLOYER TO HAVE VIOLATED THIS SECTION, THE COURT SHALL ENTER JUDGMENT AGAINST THE EMPLOYER FOR TREBLE THE AMOUNT OF ALL WITHHOLDINGS, PAYMENTS, CONTRIBUTIONS, OR PREMIUMS THAT THE EMPLOYER WAS OBLIGATED TO MAKE BUT DID NOT MAKE PURSUANT TO SUBPARAGRAPHS (1) THROUGH (4) OF PARAGRAPH (A) OF THIS SECTION, OR \$5,000 PER EMPLOYEE FOR WHICH A VIOLATION WAS COMMITTED, WHICHEVER IS GREATER.

C. THE ATTORNEY GENERAL SHALL REMIT ALL SUMS COLLECTED FROM EMPLOYERS UNDER THIS SECTION TO THE ARIZONA DEPARTMENT OF EDUCATION AND THE ARIZONA DEPARTMENT OF HEALTH SERVICES IN EQUAL AMOUNTS. THE ARIZONA DEPARTMENT OF EDUCATION AND THE ARIZONA DEPARTMENT OF HEALTH SERVICES ARE HEREBY AUTHORIZED TO DISTRIBUTE THE FUNDS RECEIVED PURSUANT TO THIS SECTION TO SCHOOL DISTRICTS AND EMERGENCY ROOM PROVIDERS AT HOSPITALS TO USE TO OFFSET THE COSTS OF THE EFFECTS OF ILLEGAL IMMIGRATION.

Section 5. Severability

If any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are several.

Section 6. Short title

The measure shall be known as and may be cited as the "Stop Illegal Hiring" Act.

ANALYSIS BY LEGISLATIVE COUNCIL

Proposition 202 makes various changes to the state laws prohibiting an employer from intentionally or knowingly employing an alien who is not authorized under federal law to work in the United States. Under Proposition 202, the definition of "knowingly

employ an unauthorized alien" would be amended to require actual knowledge by an owner or officer of the employer.

Proposition 202 would provide that a state, county or local official, in attempting to verify with the federal government if a person is authorized to work in the United States, shall rely solely upon the processes and procedures set forth in federal law. Additionally it allows the court to take judicial notice of the federal government's determination of legal work eligibility and provides the court may request the federal government to provide automated or testimonial verification pursuant to federal law.

Proposition 202 allows any person to file a written and signed complaint with the attorney general or county attorney that an employer in this state was either intentionally or knowingly employing an unauthorized alien in this state. If a person files a false or frivolous complaint, the person would be guilty of a class 3 misdemeanor. If the complaint is found to be valid, the appropriate federal and local officials would be notified by the attorney general or the county attorney. The county attorney would be authorized to bring an action against an employer only for violations that occur beginning January 1, 2009.

For the first knowing violation in a three-year period, the court shall:

- Confirm that the employer has terminated or will terminate the employment of all unauthorized aliens in this state.
- Order the employer to be subject to a three-year probationary period and file quarterly reports with the county attorney of each new employee hired at the location where the unauthorized alien performed work.
- Order the employer to sign an affidavit stating that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not knowingly or intentionally employ any unauthorized aliens in this state. If the affidavit is not signed, all licenses held by the employer that are necessary for the employer to operate the employer's business at the business location where the unauthorized alien performed work would be suspended until the affidavit is signed. If there are no licenses held by the employer specific to that business location, the court would be required to order the suspension of all licenses held by the employer at the employer's primary place of business in this state. The court would be authorized to order that the business licenses of the employer be suspended for no more than ten days if certain factors are present.

For a first intentional violation in a five-year period, the court shall:

- Confirm that the employer has terminated or will terminate the employment of all unauthorized aliens in this state.
- Order the employer to be subject to a five-year probationary period and file quarterly reports with the county attorney of each new employee hired at the location where the unauthorized alien performed work.
- Order the employer to sign an affidavit stating that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not knowingly or intentionally employ any unauthorized aliens in this state. If the affidavit is not signed, all licenses held by the employer that are necessary for the employer to operate the employer's business at the business location where the unauthorized alien performed work would be suspended until the affidavit is signed. If there are no licenses held by the employer specific to that business location, the court would be required to order the suspension of all licenses held by the employer at the employer's primary place of business in this state.
- Order the appropriate agencies to suspend all of the employer's business licenses as described above for a minimum of 10 days.

For a second knowing or intentional violation during a probationary period, Proposition 202 would require the court to order the permanent revocation of all licenses held by the employer that are necessary for the employer to operate the employer's business at the business location where the unauthorized alien performed work. If there are no licenses held by the employer specific to that business location, the court would be required to order the permanent revocation of all licenses held by the employer at the employer's primary place of business in this state.

Proposition 202 creates a non-rebuttable presumption of innocence if an employer verifies work eligibility through the E-verify system or other method as provided under federal law. Additionally, it creates an affirmative defense of innocence if an employer establishes that it complied in good faith with the requirements of 8 United States Code section 1324a or 1324b.

Under Proposition 202, an employer would not be required to take any action that would violate federal or state law.

Beginning January 1, 2009, Proposition 202 would require every employer, after hiring an employee, to verify the employment eligibility of the employee through the federal employment electronic verification (E-Verify) program or through other documentation procedures authorized by federal law.

Proposition 202 would authorize the attorney general to bring an action against an employer if the employer has more than four employees, pays hourly wages or salary in cash and fails to do any of the following:

1. Withhold required taxes from the employee's compensation.
2. Report the hiring of an employee to the state.
3. Make the required contributions for unemployment compensation benefits.
4. Provide employees coverage for workers compensation.

If the employer is found guilty of any of these actions, the court would be required to enter a judgment against the employer for triple the amount of money that the employer failed to pay or \$5,000 per employee for which a violation was committed, whichever is greater. All sums paid by the employer would be remitted to the Arizona department of education and the Arizona department of health services for distribution to school districts and emergency room providers to use to offset the costs of illegal immigration.

Proposition 202 would expand the crime of identity theft to include a person who knowingly takes or uses personal identifying information of another person or entity without the consent of that other person or entity with the intent to obtain or continue employment. The crime of identity theft would also be expanded to include a person who knowingly accepts any personal identifying information of another person from an individual knowing that they are not the identified person and uses the information for work authorization under federal law. Identity theft is a class 4 felony.

Proposition 202 would expand the crime of aggravated identity theft to include the theft of two or more identities or an identity theft that causes at least \$1,000 in economic loss. Aggravated identity theft is a class 3 felony.

Proposition 202 would expand the crime of trafficking in the identity of another person or entity to include a person who sells personal identifying information of another person or entity with the intent of allowing another person to obtain or continue employment. Trafficking is a class 2 felony.

FISCAL IMPACT STATEMENT

State law requires the Joint Legislative Budget Committee (JLBC) Staff to prepare a summary of the fiscal impact of certain ballot measures. The State may receive revenues in the form of fines from violators of the provisions of Proposition 202. The Attorney General and county attorney offices will have responsibility to enforce these provisions. The fines generated by non-compliant cash-paying employers will be equally distributed to the Department of Education and the Department of Health Services for distribution to school districts and emergency room providers to offset costs of the effects of illegal immigration. The total amount of fines will depend on the level of employer compliance, which is difficult to predict in advance.

ARGUMENTS "FOR" PROPOSITION 202

In my ten years prosecuting criminals on behalf of the state and federal governments, I have seen firsthand the effects of illegal immigration in Arizona. Because I want my children to grow up in a state that is both secure and prosperous, I agreed to chair the Stop Illegal Hiring campaign.

This initiative is the toughest law allowed by the Constitution. Importantly, it is also enforceable and fair.

The Stop Illegal Hiring Act is tough because it gives law enforcement the tools they need to target the underground, black mar-

ket cash economy; removes illegal immigrants' ability to conceal their undocumented status by strengthening identity theft statutes; and creates a two-strike penalty that puts employers out of business if they hire illegal immigrants.

Most importantly, this law allows police to arrest employers who knowingly accept fake documents from any person seeking employment.

The Stop Illegal Hiring Act is fair because it protects innocent employees by targeting those employers who don't verify documents or who skirt taxes by paying cash only. It ensures a fair complaint process and protects law-abiding businesses and their employees. It does not mandate the use of flawed databases and directs all fines collected to schools and hospitals, where the effects of illegal immigration are great.

Please vote yes for Proposition 202, the Stop Illegal Hiring Act.

Andrew Pacheco, Chairman, Stop Illegal Hiring, Phoenix

Vote **YES** on Proposition 202 for a workable employer sanctions law.

It is time for Arizona to stop the legislative and court room wrangling over employer sanctions for hiring foreign workers. Until the federal government decides to act responsibly on the whole immigration and work visa issues, we need a law that will work for enforcement officials and is fair to responsible employers. We do not need the current law that has a bunch of paper processing legal "GOTCHA's".

This initiative is tough on employers who do not follow the law. It is tough on employers who hire off the books and pay under the table. At the same time, it protects the rights and gives reasonable due process of employers who act responsibly. The debate on the need for employer sanctions at the state level is over--- the public is demanding sanctions. Let's make them work for both enforcement and employers.

There will be greater compliance with laws that are fair and workable.

Kevin Rogers, President, Arizona Farm Bureau, Gilbert

Jim Klinker, Chief Administrative Officer, Arizona Farm Bureau, Gilbert

Paid for by "Arizona Farm Bureau"

WESTMARC urges a YES VOTE on Proposition 202!

WESTMARC is a regional coalition of business, government, and education that advocates for good public policy. As a partnership between business and government, it is paramount that we thoroughly consider public policy issues and work collaboratively toward public policy that is good for our West Valley region and our state.

WESTMARC has thoroughly reviewed Proposition 202 and believes that the Stop Illegal Hiring Initiative will be beneficial to our region and our state.

This Initiative:

- would further improve the 2008 employer sanctions legislation;
- would now align Arizona's definitions of employment of unauthorized aliens to federal law;
- would require complainants to identify themselves instead of being allowed anonymous complaints;
- would require the attorney general/county attorney to determine whether to investigate a complaint, instead of the current mandate that they *shall* investigate *any* complaint;
- would clarify that illegal employment violations and subsequent penalties have to be for illegal employees in this state and not for employees of a multi-state employers whose employees are in a state without an employer sanction;
- would delay the use of E-Verify until after December 31, 2008;
- would tighten conditions under which a person commits aggravated identity theft; and
- would require more employers who pay in cash to be penalized if they fail to: withhold taxes, make unemployment compensation contributions, provide workers comp coverage, or report these hirings to DES.

WESTMARC believes these changes are necessary for strengthening Arizona's economy. Therefore, we encourage you to support the Stop Illegal Hiring Initiative and urge you to vote YES on Proposition 202!

Ray L. Jones, Chairman, WESTMARC, Peoria

Jack W. Lunsford, President & CEO, WESTMARC, Peoria

Paid for by "WESTMARC"

I've been in the restaurant business for over 40 years. In that time I've employed thousands of hardworking individuals for whom the jobs I provided were often their first step on the road to economic self-sufficiency.

I consider my restaurant career to have been a success and I am very proud of all I've accomplished. But today's restaurant industry is much different than the industry I entered into many years ago. Jobs that were once viewed as desirable and a good start to a career are increasingly hard to fill.

The battle to find good employees plays out each and every day as restaurants grapple with one of the tightest labor markets in the country. Even with one of the world's most recognizable brands standing behind me, finding reliable employees isn't easy. Unfortunately, in this business, not everyone is playing by the rules when it comes to hiring.

There are some unscrupulous business owners that are using illegal hiring practices. They're trying to cut corners by hiring illegal immigrants. And those illegal immigrants are often using stolen identities to avoid closer scrutiny.

Arizona needs to get tough on the practice of illegal hiring and identity theft while protecting legitimate employers and employees. Arizona needs the Stop Illegal Hiring Act.

I am very concerned about the haphazard way that Arizona has attempted to confront illegal immigration. Our state needs a law that makes sense; that is tough, enforceable and fair.

Stop Illegal Hiring institutes very real penalties on business owners who are found to have illegal workers working for them, while toughening the penalties for identity theft, a crime that is at epidemic proportions in Arizona.

I urge you to vote yes for Stop Illegal Hiring, a tough but fair solution to our state's illegal immigration problem.

Mac Magruder, Phoenix

Arizona businesses are the heartbeat of our state's economy. Businesses small and large are meeting payrolls each week that keep hardworking Arizonans out of the unemployment lines and in the shops, factories and offices.

But just like your family's budget, times are tight for Arizona businesses. Gas prices are continuing upward, increasing transportation costs. The credit crunch is making it harder for entrepreneurs to secure financing. The labor market remains tight, especially for employers seeking low-skilled employees. Unfortunately, many businesses are assessing whether Arizona is the right state for them to continue doing business.

Arizona's business community needs an immigration enforcement mechanism that encourages legitimate employers to continue to do business in Arizona while telling illegal employers that our state is closed to them.

I support the Stop Illegal Hiring Act because it is very clear in its mission and its execution. Illegal employers will be targeted for prosecution, but there are protections for legitimate employers to ensure that they can continue to do business unencumbered.

The law would also ensure that your job wouldn't be put in jeopardy if someone at your job tries to cut corners by hiring someone they shouldn't.

Stop Illegal Hiring is tough but fair. It's the immigration law our state needs. I urge you to vote yes for Stop Illegal Hiring.

AnnaMarie Knorr, Phoenix

ARGUMENTS "AGAINST" PROPOSITION 202

"Stop Illegal Hiring" is designed to sound good to voters while giving employers amnesty in advance for hiring illegals.

Punishments include fines and/or loss of the company business license. But businesses not requiring a license are automatically exempt. Also exempt from punishment are incorporated companies, partnerships and Transaction Privilege Licenses. Most corporate retailers like restaurants, hotels and retail chains are exempt. Who's left?

Unlike Silent Witness, citizens wanting to report violating employers must file a written notarized affidavit. SIH initiative author Andrew Pacheco knows how effectively that will intimidate citizens.

Sheriff Joe's Hot Line will close down, despite all the drop houses, drug smugglers, and coyotes caught and prosecuted under Arizona's human smuggling law.

"Good Samaritan Laws" encourage citizens to stop and render aid to those in trouble by exempting them from lawsuits. By dismissing the complaint as "frivolous," a pro-illegal or pro-business prosecutor sets up a citizen acting in good faith to be charged with a crime.

Stop Illegal Hiring has a built-in free pass for employers: by using the E-Verify Program, they're exempt from investigation even if they're guilty as sin! Such a deal!

The biggest scam is the claim that collected fines goes to schools and hospitals to help them cover their costs of illegal aliens. Schools and hospitals are two of the biggest "aiders and abettors" to businesses wanting to protect their taxpayer-subsidized cheap illegal labor.

School and hospital lobby groups (AZ School Boards Association & AZ Hospital Association) each donated \$10,000 in 2004 to "Defeat Proposition 200!"

But don't be fooled! Fines come from prosecuting employers who hire illegals, and the **Stop Illegal Hiring Initiative** does everything possible to prevent punishing guilty employers.

Reject Employer Amnesty! Vote NO on Stop Illegal Hiring!

Wilfred Hoffman, Retired Engineer & Citizen Activist, Tempe

Here we are, 7 years after 9/11 and our borders are still porous. Because of the failure of government and political correctness on the behalf of some with either private agendas against having a secure, bordered, safe country, or a private reason to hold down wages against American citizens, (and their own greed on exploiting a labor source that will operate here on scraps because their own countries do not respect their lives as afforded by our great constitution). We have reached a point where some seek to bypass common sense answers that do not reward their agendas, or that places danger in open borders, racism on anti-illegal immigration, and poverty on low wages. We are losing opportunities and continue with divisive policies and missing opportunities for real solutions to problems that a responsible American society must deal with. We can do better than this. This is nothing more than some groups that have selfish reasons (to stop any reasonable immigration policy from being adopted) whom want us to continue with insane open border policies that are working with some that have real concerns but are only putting band-aids where major surgery should be required. WE NEED to keep government responsible and hold its feet to the fires of our anger and get either sensible, viable, realistic answers put forth and adopted or new leadership elected across the state this fall to do it.

John Fillmore, Apache Junction

Arizona's current employer sanctions law has been working extremely well at reducing illegal immigration in Arizona. Prop 202, the Stop Illegal Hiring ballot measure stands in stark contrast in both form and substance to our current law that was passed by the legislature and signed by the Governor.

In spite of this ballot measure's, its intent is to support actions by both employers and illegal immigrants so they can continue to flaunt federal and state laws. Unbelievably, it replaces federal definitions and consequences of being an illegal alien and hiring an illegal alien with language that supports illegal alien and employer amnesty. VOTE NO on Prop 202.

In addition, Arizona's current employer sanctions law has already been upheld and certified constitutional by a federal court while the Stop Illegal Hiring ballot measure is on a fast track to be struck down in court because it imposes fines in direct violation of federal law. This is not my assessment, rather the printed decision by United States District Court Judge Neal Wake, who decreed that state laws cannot enact fines and penalties – they are solely the under the jurisdiction of the federal government. VOTE NO on Prop 202.

Current Arizona law requires **ALL** employers to use the Federal E-Verify system to determine the legal status for all new hires. That requirement has had a great impact in driving illegal labor from Arizona. The best part of the E-Verify system is it is easy, free and protects law abiding employers from unfair charges while protecting our workforce and economy from the problems associated with the luring and hiring of illegals throughout our economy. The proposed initiative would eliminate the E-Verify requirement, taking the teeth out of Arizona's current law.

Vote **NO** on Prop 202 the Stop Illegal Hiring measure.

Don Goldwater, Laveen

Please vote "NO." "Stop Illegal Hiring Act" is employer amnesty.

This initiative is fraud on Arizona voters. Arizona has the most effective, non-discriminatory employer sanctions law in the nation and it has been upheld in 4 court challenges, which were brought by the same folks who bring you this initiative. This group puts "profits over patriotism," and will do everything they can to keep "cheap" illegal labor, while hurting American workers.

Proponents of this initiative have exploited a loophole in state law and refuse to name who is funding the campaign. We do know that some of the people pushing this initiative have been vocal opponents of illegal immigration enforcement and are funding the court challenge against Arizona's right to enforce immigration laws.

The "Stop Illegal Hiring Act" guts our employer sanctions law:

1) It abolishes required use of E-Verify. Federal Judge John Walker, blasted the current federal I-9 process. "The documents (workers present to companies) are fraudulent." E-Verify is to help employers hire legal employees and is 99,7% accurate.

2) It requires Arizona to wait until the federal government has taken action against an employer before the state takes action.

3) It exempts thousands of Arizona employers from the employer sanctions law by taking articles of incorporation and LLC reg-

istration out of the definition of "license."

4) It requires all complaints regarding employer violations of the law to be written and signed. This would stop employees from reporting violations. Anonymous tips are an important tool in taking criminals, including serial killers, off the streets.

5) It imposes an impossible standard of proof. High-level managers who are not officers or owners could hire illegal aliens with impunity, and would not face any enforcement.

Stop Illegal Hiring Act intentionally guts Arizona's employer sanctions law and allows illegal employers "business as usual".

Russell Pearce, State Representative, Legislative District 18, Mesa

Why vote NO on PROPOSITION 202? (aka "STOP ILLEGAL HIRING")?

FOLLOW THE MONEY...

Proposition 202's primary \$\$\$\$ source is a group called Wake Up Arizona, who has provided 72% of their money so far.

Wake Up Arizona has opposed the current Employers Sanctions Law from the beginning, paying huge legal bills for court battles to defeat it. We know Wake Up Arizona's leader is Marion "Mac" Magruder, owner of several Phoenix McDonalds franchises.

Other "members" of Wake Up Arizona don't identify themselves; their website only says they're "a coalition of Arizonans concerned about the unintended consequences of the state's new employer sanctions law HB 2779."

But The Money Trail exposes Proposition 202 supporters and reveals their true agenda:

\$373,900.00 Wake Up Arizona 5005 N 12th Street, Suite 200, Phoenix, AZ

\$25,000.00 Western Growers, Irvine, CA

\$9,500.00 Marion Magruder, Franchise Owner, head of Wake Up Arizona, Paradise Valley, AZ

\$9,500.00 Arizona McDonalds Operators Association, Phoenix, AZ

\$3,000.00 Lenny Rosenberg, Self-Employed Restaurant Owner, Phoenix, AZ

\$2,500.00 Southern Arizona Home Builders Association, Tucson, AZ

\$2,500.00 Pasquinelli Produce, Yuma, AZ

Why do "members" of Wake Up Arizona refuse to identify themselves? Why would Proposition 202 backers misrepresent their initiative to voters, calling it "Stop Illegal Hiring" when it does exactly the opposite?

The centuries-old answer is greed, described in I Timothy 6:10: "...for the love of money is the root of all evil."

Supporters of Proposition 202 include the most notorious industries employing cheap illegal labor. Shifting their illegal employees' costs to taxpayers (tax-funded welfare, food stamps, rent & utility subsidies, medical care) helps their bottom line and fattens their wallets. That's why their \$\$\$\$ supports a ballot measure allowing them to continue.

Tell greedy employers "Enough!" Vote NO on Proposition 202.

Sandra J. Miller, Commentary Writer & IT Professional, Phoenix

If previous ballot measures are indicators, the majority of Arizonans believe that the state needs to "Stop Illegal Hiring." If truth in packaging were applicable here, this legislation would be called "Employer Amnesty." This legislation removes two key provisions of the existing Employer Sanction's Law strong provisions which had the agreement of the legislature and Governor. The first essential element that is removed is the mandate that all businesses use the highly effective, user-friendly federal E-Verify system. E-Verify assures that only legal workers can gain employment in Arizona and has a provision for correcting errors. "Stop Illegal Hiring" offers the less-stringent federal guidelines presently in force as a substitute for E-Verify and relies on documents that have been easily forged and have been found counterfeited on Phoenix streets. The second element this proposition removes is the acceptance of anonymous tips regarding the hiring of illegal workers. Police departments have long recognized the effectiveness of Silent Witness Programs reporting crime. Removing these two key provisions from the current law will permit employers to hire illegal workers and stop vital information regarding illegal activity from being gathered. Hiring illegal workers takes jobs away from legal workers, lowers the prevailing wages, and flies in the face of law and order. Vote NO on PROP 202.

Tim Rafferty, President, RidersUSA, Corp., Tempe

Richard Martin, Vice President, RidersUSA, Corp.,
Tempe

Paid for by "RidersUSA, Corp."

Do not be fooled by this initiative or its title. It is employer amnesty, nothing more. The initiative is backed and funded by the same group of businesses and individuals who tried to stop our State Legislature from passing any employer sanctions at all. In spite of their efforts, the Republican-led Legislature passed a tough but fair law Democrat Governor Napolitano signed into law. This bi-partisan solution punishes businesses who knowingly and deliberately hire illegal aliens. It does NOT punish those who play by the rules. When the law was signed, these pro-amnesty groups turned their wrath on the legislators who voted for the bill, promising to defeat them in their next election. When those threats failed to sway anyone, they proceeded to file this initiative, collecting signatures under the guise of "doing something about illegal aliens." Ask yourself, if Arizona already has the toughest employer sanctions law in the country, why would we need more? Do we really trust the businesses that violate these laws to be in charge of writing their own rules? With so much money coming from fast-food restaurant owners, homebuilders, and other such industries, are we really expected to believe this initiative is serious about enforcement? The fact is: this initiative will gut our existing laws and will let the employers who cheat just wink at law enforcement on their way by. Our current law is working and it levels the playing field between honest businesses and dishonest businesses. Finally, the law passed by our Legislature can be amended and improved. Initiatives cannot be amended by the Legislature, so if this amnesty bill passes, we won't be able to fix it after the fact. Please support employer sanctions and OPPOSE this initiative. Call (602) 503-0291 if you have any questions.

Thomas F. Husband, Chairman, Maricopa County Republican Committee, Paradise Valley

Paid for by "Maricopa County Republican Committee"

The Legislative District 9 Republican Executive Committee opposes the "Stop Illegal Hiring Act" (PROP 202).

Do not be fooled. The name is intentionally deceptive. Instead of stopping illegal hiring, this ballot measure will actually gut the existing employer sanctions law passed by the Arizona State Legislature. The current law requires employers to check if new employees are U.S. Citizens using the E-verify system, a simple verification system already in place through the U.S. Department of Homeland Security. The business groups that are backing this Stop Illegal Hiring act do not want to stop illegal hiring, they want to continue it!

Do not be fooled. Please Vote No.

On behalf of the LD9 Republican Executive Committee

Raymond E. Spitzer, Chairman, Legislative District 9 Republican Executive Committee, Glendale

BALLOT FORMAT

PROPOSITION 202

PROPOSED BY INITIATIVE PETITION RELATING TO
EMPLOYMENT

OFFICIAL TITLE

AMENDING TITLE 13, CHAPTER 20, ARIZONA REVISED STATUTES, BY AMENDING SECTIONS 13-2008, 13-2009, AND 13-2010; AND AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY AMENDING SECTIONS 23-211, 23-212, 23-213, AND 23-214, AND ADDING SECTION 23-215.

DESCRIPTIVE TITLE

MODIFIES LAWS THAT SUSPEND OR REVOKE BUSINESS LICENSES FOR EMPLOYERS WHO KNOWINGLY OR INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN; INCREASES PENALTIES ON IDENTITY THEFT RELATED TO EMPLOYMENT; ADDS FINES ON EMPLOYERS WHO PAY IMPROPERLY REPORTED CASH WAGES; ESTABLISHES PRESUMPTION FAVORING EMPLOYER THAT VERIFIES EMPLOYEE ELIGIBILITY UNDER FEDERAL LAW.

A "yes" vote shall have the effect of modifying the laws covering employers who knowingly or intentionally employ "unauthorized aliens," suspending or revoking licenses of businesses that employ unauthorized aliens, adding penalties on employers who fail to properly report cash wages, increasing penalties for identity theft related to employment, and establishing a presumption favoring an employer that verifies employee eligibility under federal law.	YES <input type="checkbox"/>
A "no" vote shall have the effect of retaining Arizona's current employment laws that suspend or revoke business licenses for employers who knowingly or intentionally employ an unauthorized alien.	NO <input type="checkbox"/>

PROPOSITION 202