

AN EXPLANATION OF THE EMPLOYER SANCTIONS BILL

The Legislature passed and the Governor signed HB 2779, the Employer Sanctions Bill, also known as the "Legal Arizona Workers Act." This Act impacts everyone that holds any kind of license from the state with very few exceptions, and includes any employer that transacts business as a corporation, LLC or partnership. This summarizes the obligations on employers and the consequences for not carrying them out.

Effective January 1, 2008, it is a violation of state law to knowingly hire a person who is not authorized to work in this country. In order to comply, every employer must check every new hire in the Federal Basic Pilot program to determine whether the person may lawfully work. This program is a database that an employer may access to determine whether the social security number presented by the worker matches the name of the worker. Obviously, if there is no match, the employer will need to investigate further and if no explanation for the discrepancy is found terminate the worker. If there is a match, the employer will have a defense against sanctions.

If the employer knowingly hires an unlawful worker, the following sanctions shall be applied for a first offense:

1. The employer is required to terminate all unauthorized alien employees and provide an affidavit to that effect within 3 days of the court's determination that a violation has occurred. If that affidavit is not done on time, the employer's licenses are to be suspended pending filing of the affidavit.
2. Even if the affidavit is filed on time, the court may, depending on certain factors, suspend the employer's licenses for up to 10 business days
3. The employer is required to file quarterly reports for 3 years with their local county attorney of each new employee hired at the location where the unauthorized alien was employed
4. The employer is put on probation for 3 years.

If the employer intentionally hires an unlawful worker, the following sanctions shall be applied for a first offense

1. The employer is required to terminate all unauthorized alien employees and provide an affidavit to that effect to the county attorney.
2. The employer's licenses are suspended for a minimum of 10 days, until the affidavit is filed if longer than 10 days after the court's order, or, based on a number of factors, an even longer period ordered by the court.
3. The employer is required to file quarterly reports for 5 years with the county attorney for each new hire.
4. The employer is put on probation for 5 years.

For a second offense in the probationary period (that is, 3 or 5 years depending on whether the first offense was knowing or intentional), the court shall revoke any necessary state licenses for the location at which the worker was employed.

The licenses that the bill refers to are those state licenses that are necessary for the business to be conducted at that location. For example, if the employer has multiple outlets, and licenses for each outlet, then the license for the particular outlet would be lost. If the employer has one blanket license for all of its locations, however, it would lose that one license and be out of a license for all of its locations.

Two important items should be noted.

1. Professional licenses are not at risk.
2. "License" includes Articles of Incorporation for Arizona Corporations, Limited Partnerships Agreements, Articles of Organization for Arizona Limited Liability Companies, and any Authority to Transact Business for out-of-state corporations, partnerships or LLCs. Thus, the suspension or revocation of a license puts a business at risk of losing its very existence as an entity.

Obviously, the first and most important result of this legislation is to encourage compliance. Effective January 1, 2008, use of the Basic Pilot Program is no longer voluntary, but mandatory. It is extremely important that systems be in place to use that system for every hire and to keep a record of that use, along with all supporting documents reviewed in confirming the authority to hire.

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Contact the association office at 602-996-1220 to order.



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Because of the approach to licensing, it may suggest some strategies to avoid a system wide loss of licensing by obtaining separate licenses for separate facilities or even having separate entities operating each facility under a common parent.

A final note of caution. The Act requires that the Attorney General or County Attorney investigate every complaint that someone has hired an unauthorized alien. This not only creates possibilities for mischief (competitors bogging down one another with scurrilous complaints, for example) but makes it all too easy for good, careful employers to be caught in an investigation, and required to provide documentation of each hire. Smart employers will adjust their practices accordingly to ensure that they not only have hired authorized persons, but that they can prove what they did to ensure that.

A lawsuit has been filed to attempt to enjoin the Act from taking effect. We cannot be at all certain of the outcome of that lawsuit, and believe that it is best that employers operate on the assumption that the lawsuit will not be successful absent an announcement to the contrary.

In October, the Department of Revenue is to provide notice to employers of the new law and how to comply with it. We thought this early heads up would be of help in getting appropriate systems in place in anticipation of the law's effective date. We will continue to monitor developments as they become publicly available and forward significant items to you. If you have any questions at all, please let us know.

Steve Duffy
ISAACSON & DUFFY, P.C.

Message from the President Lou Valerio

Arizona Unit Wins Coveted Award

ACA International held its 68th National Convention in Chicago late last July. Many Arizona agencies were in attendance.



The convention was another record setter for attendance. Much hard work and a little bit of eating and a lot of meeting was enjoyed by all attending. Our local board was represented by Chris Becraft, Chris Lehr, Pat Esquivel, Bob Cherner, Paul

Peach and I.

The Arizona Unit was also represented at the annual ACA Int'l Board Meeting by Chris Becraft and me. Arizona presented a valuable amendment to the bylaws written and present by Chris Becraft. This amendment moved that local units will not work to exclude interstate trade by creating licensing and other regulatory restrictions. The amendment passed with overwhelming support. Nice job Chris!!

As current Arizona Unit President I am pleased to report back that Arizona's unit was awarded the "Unit Excellence Award". It really is great to be acknowledged by your association for the outstanding contribution we are making to the membership as well as community at large. I can't help but remember back in November of last year when I was sworn in as President that my challenge to the membership was to put forward an effort to bring back this honor to Arizona in July. With the incredible work and support of all the board members as well as the great participation of all our members, we did it! Thank you to all involved.

The annual meeting for MAP attorneys was also held in conjunction with the convention. David Lippman has been appointed to a two year term as the new Arizona MAP Chair, we wish him great success. David will have some mighty large shoes to fill replacing Pat Esquivel. Pat has been a tireless board member, supplier of newsletter articles whenever asked and very popular speaker at many of our local workshops. I know I speak for everyone in extending a big THANK YOU, PAT for all your hard work and help.

As always I encourage you to check out our website, attend our workshops and get involved in your association.

The Economy's Impact on the Collection Business

As I write this article, I am reminded of the famous quote of George Santayana, "Those who do not remember the past are condemned to repeat it."

It isn't difficult to make comparisons with today's subprime meltdown to the late 80's and the S&L scandal. Back then we had loans with falsified documentation and little equity. How times have changed! The difference today is that instead of the Savings Banks going under, it's now the investors around the world that purchased these mortgaged back securities that are taking the hit. Once again, we are hearing calls in congress for a bail out. The goal would be to stabilize the credit markets for future homeowners, but in reality this proposal would bail out the people that falsified their loan applications; and as a result of "interest only" loans, are unable to move into traditional financing. With an estimated 7 million people expected to lose their homes this year, apparently it's our collective responsibility to keep these consumers in homes they shouldn't have bought to begin with.

Collection industry veterans remember the RTC years as a time of challenges including attempting to collect from consumers that were walking away from their homes and leaving Arizona in record numbers. What we are seeing today in the sub-prime market offers some lessons for those new to the industry as well as the veterans.

Unlike twenty years ago, when we still manufactured many of our own goods, our economy is now primarily based on consumers opening their wallets, and in reality, their credit cards. A recent news report stated that over 67% of our gross domestic product is driven by consumer spending. Every week we get another announcement that a national homebuilder is reporting losses for the first time in decades, or worse; the first time in that company's history. In addition, we find a consumer who has seen everything from gas prices more than doubling over the past 3 years as well as general costs of living increase. At the same time, the average consumer has seen their income eaten away by increasing medical costs, reduced employer contributions for health insurance, and a stagnant growth in income. We anticipate that in the next 6-12 months we will see a consumer who cannot and will not spend anymore beyond their basic needs.

The reality is that most consumers have been living beyond their means for several years, and with the resets that are happening in the ARM business, consumers are finally facing the fact that they paid more than they should have for a home that they couldn't afford under traditional financing.

Despite record corporate profits, the outlook for our economy does not look good in the short term. At the same time, the outlook for the collection industry should remain bright. There is one constant in collections, in good times the collection business is great and in bad times it's even better!

What lessons from the past can be applied to today's volatile market? For one, those who are in the market to buy debt, especially so called "guaranteed asset" portfolios should govern their actions wisely. The buyer of this debt must perform their due diligence prior to purchase. There may be buying opportunities, but we caution anyone looking at acquiring portfolios in the next several months to scrutinize them very carefully. The home that is there today may be foreclosed upon in the next 6 months. Second, we expect to see continued increases in the number of bankruptcy filings. Now may be a good time to review payment plans with consumers, because I've spoken with countless consumers over the years who have told me that the collection agency "forced me in to bankruptcy because they wouldn't work with me." Consumers tend to pay people that are nice to them, and offer payment solutions that work for the consumer. Finally, make sure you are continually reviewing FDCPA policies with your staff. Don't let a challenging month provide an opportunity for one of your collectors to "bend" the law in order to make their numbers. There are several consumer attorneys in this state that would love nothing more than to seize upon your collectors slip up. We recommend the ACA computer based training along with the table stand "Keeping Tabs: the essential guide to collections" as two must haves for collection organizations.

FDCPA Tip of the month: I was recently contacted by an ACA member that is being sued in Arizona for an alleged FDCPA violation of 15 USC 1592(g)(3) (§ 809(a)(3)). This "violation" was a result of failing to use the full safe harbor language in their collection letter. This section of the act requires several pieces of information as well as statements from the debt collector, but specifically with respect to section (a)(3), there is a requirement that the consumer be notified that if they do not dispute the debt, it will assumed to be valid by the debt collector. In this case, the letter stated only that if a dispute was not received during the 30 day period it would be assumed to be valid, leaving out the word "by the debt collector." It will be interesting to see if this matter goes further than a settlement, but it would be a good time for everyone to review their letters to make sure that this language is included. The full text of §809(a)(3) is listed below:

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

Please feel free to contact me if you have any questions, comments, or suggestions. I can be reached via email david@lippmangriffeth.com or my office at 520-762-4036 ext. 101.

DISCLAIMER: This article is the opinion of the writer and not to be meant to serve as legal advice and should not be relied upon as such. Always consult your own counsel for any questions of law.

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2007 Program Schedule — Mark Your Calendar

November 16, Friday - Annual Meeting

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